1889
January 19.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight and Mr. Justice Tyrrell.

HARDEI (PLAINTIFF) *v.* RAM LAL (DEFENDANT).*

Registration—Act III of 1877 *(Registration Act) ss.* 49, 60—*Certificate of registration—Distinction between act of registering officer and conduct of parties—Certificate not invalidated and document not made inadmissible by erroneous procedure in presenting or admitting execution.*

The word "registered" as used in s. 49 of the Registration Act (III of 1877) refers to the act of registration by the registering officer, and not to matters of procedure or conduct of the parties seeking registration, which are governed by special provisions of the Act. S. 49, read with s. 60, only means that a document, to be admissible in evidence for the purposes of the former section, must be registered, *i.e.*, the officer must, under s. 60, have put upon it the certificate required by that provision. If he has done so, the document bearing such certificate becomes admissible in evidence: if he has not, or there has been no registration of the document, then such document is inadmissible. Where the document bears such a certificate, it is registered within the meaning of s. 60, and becomes under the second paragraph thereof admissible in evidence, and the operation of the second paragraph is not interfered with by s. 49.

Where, therefore, the lower appellate Court rejected as inadmissible in evidence under s. 49, a deed of gift of immoveable property upon which was endorsed a certificate under s. 60, on the ground that the person presenting it for registration and admitting execution was not qualified to do so under ss. 32 and 35, and the registration was consequently void and the document not registered under s. 17 (*a*),—*held* that the Court was wrong in so doing, and ought to have looked at and dealt with the document.

Har Sahai v. *Chunni Kuar* (1), *Ikbal Begam* v. *Sham Sundar* (2), *Bishunath Naik* v. *Kalliani Bai* (3), *Husaini Begam* v. *Mulo* (4), *Sheo Shunkar Sahoy* v. *Hirdey Narain Sahu* (5), *Muhammad Ewaz* v. *Birj Lal* (6), *Sah Mukhun Lal Panday* v. *Sah Koondan Lal* (7), *Majid Hosain* v. *Fazl-un-nissa* (8), referred to.

THIS was a reference to the Full Bench by Straight and Brodhurst, JJ., of the determination of a second appeal. The order of reference was as follows :—

"THE plaintiff is the widow of Har Narain, son of Bal Kishan, and she sues to enforce a deed of gift of a house, made in her favour by her father-in-law on the 1st December, 1885, upon the allegation that Bal Kishan having died on the 2nd December, 1885, the

(1) I.L.R. 4 All., 14.
(2) I.L.R. 4 All., 384.
(3) Weekly Notes, 1882, p. 175.
(4) Weekly Notes, 1882, p. 183.
(5) I.L.R., 6 Calc., 25.
(6) L.R., 4 I.A., 166.
(7) L.R., 2 I.A., 210.
(8) L.R., 16 I.A., 19.

1889

HARDEI v. RAM LAL.

defendant, a cousin of Bal Kishan, on the 24th February, 1886, wrongfully dispossessed her of the same. The defendant pleaded, among other matters, that he and Bal Kishan were members of a joint Hindu family; that on the latter's death, the property left by him devolved on the defendant; that the plaintiff is therefore only entitled to maintenance; that at the time of the alleged gift, Bal Kishan had lost consciousness, and that the deed of gift was not duly registered. The first Court found that the defendant and Bal Kishan were not joint, and that the deed of gift was executed by the latter. Upon the question of registration, the Munsif expressed himself as follows:—

"'The facts are, that three days before his death, Bal Kishan, having got the deed written, entrusted it to Pandit Kashi Nath to get it registered. Pandit Kashi Nath explains the transaction as below:—

"'I know Bal Kishan; three days before his death he had a deed of gift written by Mannu Lal, which he entrusted to me to get registered, telling me that he could not go himself as he was seriously ill, and had dysentery. After his death, I had the deed registered. The same day when it was written, I went, but the Registrar had risen. Next day I went again, but the Tahsildar was not there, and the Peshkar had gone to look after supplies for the troops. On the third day, Bal Kishan died.' Again in cross-examination, 'Bal Kishan handing the gift to me, told me to bring the Registrar to his house, and there and then get the deed registered. Bal Kishan had given me Rs. 10 to be paid to the Tahsildár as commission, which money I returned to Shiuji Ram.' Now in these circumstances it was presented to the Registrar by Pandit Kashi Nath a few days after Bal Kishan's death, and was registered under para. 3 of s. 35, Registration Act. It is argued on behalf of the defendant that all that Bal Kishan directed Kashi Nath was to bring down the Registrar to his house, and there get it registered in his presence, and that his directions did not authorize Kashi Nath to have it registered after his death, in the manner Kashi Nath got it registered, so that Kashi Nath could not be an assign of Bal

Kishan. I think the argument does not hold. The object for which the deed was entrusted to Kashi Nath was its registration, and if for the Tahsíldár's absence from his office, it could not have been registered in the manner suggested by Bal Kishan, the only way in which it could be registered was the way in which it has been registered. Thus only could the object be accomplished by the only means available to Kashi Nath. I am of opinion that the deed was assigned to Kashi Nath for registration, he had the executant's authority for the purpose, and he was his assign."

"From the decision of the Munsif, the defendant appealed, and the learned Judge reversed his decision, holding that Pandit Kashi Nath was not an assign of the deceased Bal Kishen, within the meaning of s. 32 or s. 35 of the Registration Act, and that consequently the registration of the deed of gift, under which the plaintiff claimed, was void, and thus the deed of gift itself must be held to be void as not having been registered under s. 17, clause *(a)* of the Registration Act.

"From this decision of the Judge, the plaintiff appealed to this Court, and the two points urged before us were—

"1. That the deed being in fact registered, any defect in the procedure with regard to its registration cannot invalidate such registration.

"2. That the registration was valid.

"It may be convenient to give a translation of the registration endorsement which runs in the following terms :—

"This document was presented for registration in the office of the Sub-Registrar of Khurja, in the district of Bulandshahr, on Tuesday, the 5th January, 1886, between 1 and 2 P.M. with an application under s. 35, Act III of 1877. The execution of this document was acknowledged on behalf of Bal Kishan, son of Budh Sen, Brahman, resident of Khurja, the deceased executant of the deed, who had died after executing and depositing the deed, by Pandit Kashi Nath, son of Shiu Parshad, Brahman, resident of Khurja, aged 45, the assign *(Mufabwazilat)* of the deed, and he

1889

HARDEI. v. RAM LAL.

was identified by Mannu Lal, son of Jahangir Mal, caste Banya, and Bansidhar, Brahman."

The case came for hearing before a Full Bench consisting of Edge, C.J., and Straight and Tyrrell, JJ. On the 27th July, 1888, their Lordships passed the following order :—

"Before we can dispose of this reference, it is necessary that we should have findings recorded by the lower Court upon the following issues :—

"1. Was the deed of gift executed by Bal Kishan ?

"2. Was the deed of gift delivered to Kashi Nath by Bal Kishan for the purpose of being registered ?

"3. Did Bal Kishan merely direct Kashi Nath to bring the Registrar to his house so that he, Bal Kishan, might personally effect registration, or did he give the deed to or leave it in the hands of Kashi Nath, so that it might be registered under any circumstances ?

"4. In presenting the deed of gift for registration, did Kashi Nath act *bonâ fide* and in the honest belief that in doing so he was carrying out the wishes and intentions of Bal Kishan ?

"The lower Court will also dispose of the questions of fact raised by the third, fourth and fifth pleas in the memorandum of appeal in the Court below."

The third, fourth and fifth pleas in the memorandum of appeal in the Court below were as follows :—

"3. The delivery of possession under the deed of gift is not shown, inasmuch as Bal Kishan used to live till his death in the disputed house. Even if the deed of gift be taken as genuine, it is invalid under the Hindu Law.

"4. The documentary evidence proves that the house in which the door and almirah of the appellant's house are fixed is the exclusive property of the appellant, and has been all along in his possession. The decree of the lower Court for demolition of the door and window is entirely improper.

1889

HARDEI v. RAM LAL.

"5. The evidence on record shows that the wall in which there is a window and an almirah, belongs to the house of the appellant and is his property. Therefore the plaintiff is not entitled to sue in respect of the constructions and changes therein."

On the remand, the District Judge of Meerut found, with reference to the issues remitted by the High Court, (i) that the deed of gift was executed by Bal Kishan, (ii) that the deed of gift was delivered to Kashi Nath by Bal Kishan for the purpose of being registered, (iii) that Bal Kishan intended that the deed should be registered under any circumstances, and (iv) that in presenting the deed for registration Kashi Nath acted *bonâ fide* and in the honest belief that in doing so he was carrying out Bal Kishan's wishes. In reference to the third, fourth and fifth pleas taken in the memorandum of appeal to the lower Court, the District Judge found (i) that the donee was living with the donor in the house prior to the donor's death, and that the necessity for any formal delivery of possession was therefore obviated, (ii) that the house in which the defendant's door and almirah were fixed had belonged to the donor Bal Kishan and the defendant Ram Lal jointly, and (iii) that the wall in question, since the death of Bal Kishan, belonged exclusively to the defendant.

The case now came before the Full Bench for disposal.

The Hon. Pandit *Ajudhia Nath* and Pandit *Sundar Lal*, for the appellant.

Mr. *G. T. Spankie* for the respondent.

STRAIGHT, J.—This reference to the Full Bench which concerns the determination of the second appeal referred, involves three questions.

The first of those questions is, whether the deed of gift of the 1st December, 1885, was admissible in evidence as not being barred by any provision to be found in the Registration Act of 1877.

Secondly, whether any inference from the findings recorded in the Court below, or from any other materials, is warranted that the donee obtained possession under the gift.

1889

HARDEI v. RAM LAL.

And thirdly, whether in regard to the finding of the learned Judge as to the division wall, the decision of the first Court should be modified.

The first of these questions is not *res integra*, as far as this Court is concerned, because a number of rulings more or less bearing upon it have been referred to by Pandit *Sundar Lal* who appeared on behalf of the appellant. Those rulings are *Har Sahai* v. *Chunni Kuar* (1), *Ikbal Begam* v. *Sham Sundar* (2), *Bishunath Naik* v. *Kalliani Bai* (3) *Husaini Begam* v. *Mulo* (4). In those rulings a decision of the Calcutta High Court in *Sheo Shankar Sahoy* v. *Hirdey Narain Sahu* (5) was referred to, approved and followed, and in one of those rulings reference was also made to a judgment of their Lordships of the Privy Council, *Muhammad Ewaz* v. *Birj Lal* (6). In this connection I may also refer to another ruling of their Lordships of the Privy Council, a portion of which is recited in *Sah Mukhun Lall Panday* v. *Sah Koondun Lall* (7).

The determination of the question as to whether under s. 60, para. 2 of the Registration Act, the deed of gift of the 1st December, 1885, was duly registered, turns upon the meaning to be attached to s. 49 of the same Act, which must be looked at to see whether it in any way cuts down the operation of the second paragraph of s. 60 as to the effect the certificate endorsed upon a document by a registering officer shall have to show it was duly registered. S. 49 provides that no document required by s. 17 to be registered, shall, among other things, be received as evidence of any transaction affecting such property, "unless it has been registered in accordance with the provisions of this Act."

I have given the construction and language of this section the best consideration I can, and in my opinion the word "registered" as used in s. 49 has reference to the act of registration by the registration officer, and is not directed to or concerned with any matter of procedure or conduct of parties seeking registration, which is to

(1) I. L. R. 4 All., 14.
(2) I. L. R. 4 All., 384.
(3) Weekly Notes, 1882, p. 175.
(4) Weekly Notes, 1882, p. 183.
(5) I. L. R., 6 Calc., 25.
(6) L. R., 4 I. A., 166.
(7) L. R., 2 I. A., 210.

be guided and governed by those provisions of the registration law which direct what they should do for the purpose of effecting or bringing about registration of a document. I take s. 49, read in conjunction with s. 60, to mean nothing more than this, that a document to be admissible in evidence for the purposes of s. 49 must be registered, that is to say, the registration officer must under s. 60 have put upon that document the certificate which s. 60 requires him to put, and if he has done so the document bearing such certificate under s. 60 becomes admissible in evidence, but if he does not do so or there has been no registration of such document, then the document cannot be received as evidence because it has not been registered. This view is not without authority, because I observe that Sir Barnes Peacock in the course of his judgment in *Sah Mukhun Lal Panday* v. *Sah Koondun Lall* (1) observes :—"Again it is not clear that the words 'unless it shall have been registered in accordance with the provisions of this Act' in s. 49, are not, especially as regards strangers to the deed, confined to the procedure on admitting to registration without reference to any matters of procedure prior to registration or to the provisions of ss. 19, 21, 36 of the Act or other provisions of a similar nature. In considering the effect to be given to s. 49, that section must be read in conjunction with s. 88, and with the words of the heading of part 10, 'of the effects of registration and non-registration.' Now, considering that registration of all conveyances of immoveable property of the value of Rs. 100 or upwards is by the Act rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of s. 19, 21, or 36 or other similar provisions. It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words 'defect in procedure' in s. 88 of the Act, so that innocent and ignorant persons should not be deprived of their property through

(1) L. R., 2 I. A., 210.

1889

HARDEI v. RAM LAL.

any error or inadvertence of a public officer, on whom they would naturally place reliance. If the registering officer refuses to register the mistake may be rectified upon appeal under s. 83 or upon petition under s. 84, as the case may be; but if he registers where he ought not to register, innocent persons may be misled and may not discover, until it is too late to rectify it, the error by which, if the registration is in consequence of it to be treated as a nullity, they may be deprived of their just rights. It is unnecessary, however, to express any opinion on this point, as it has been decided between these parties that, notwithstanding the first registration, the deed must be considered as unregistered. Neither of the parties appealed from the decision, and therefore whether right or wrong in point of law, they are both bound by it in this suit, and it must be assumed as against them in this appeal that the first registration was a nullity."

It is to be remarked that there was no specific decision upon the precise point involved in the present case, but nevertheless their Lordships of the Privy Council do seem to have broadly stated their opinion that non-compliance with the provisions of s. 36, that is to say, non-attendance of the executant of an instrument before the Registrar, and his registering the instrument under those circumstances, would not on that account render his proceedings invalid.

Again it seems to me that the ruling of their Lordships of the Privy Council in the case of *Majid Hosain* v. *Fazl-un-nissa* (1) favours the view that I have been putting forward. Their Lordships in that case thought that although there had not been a strict compliance with the specific directions of the rules laid down in the Registration Act, a party must go to the office of the Registrar and present the instrument there, nevertheless where the Registrar had gone to the house of the executant and having ascertained all necessary particulars, had then registered the instrument, such a registration was a substantial compliance with the provision of the registration law. Indeed, to use the words of their Lordships,

(1) L.R., 16 I.A., 19.

"This registration, in fact, took place at the office of the pargana Registrar, though the officer attended to receive the deed to receive its acknowledgment, and to compare the deed with the copy. He brought it all to his own office and the registration is, in fact, the recording of the copy in the office of the pargana Registrar, all the other requisites provided by the rule having been otherwise complied with."

That case is an authority for this, that though a direction in the statute to parties seeking registration of a document had not in terms been complied with, nevertheless the certificate of the Registrar was held to be sufficient and satisfactory proof of due and proper registration.

In the present case we have before us a specific certificate from the Registrar to the effect that the particular document, *i.e.*, the deed of gift, was registered. It is not necessary for me to go at length through the reasons that seem to underlie the rulings of their Lordships of the Privy Council, for they are very fully stated in *Muhammad Ewaz* v. *Birj Lal*, (1) and Sir Montague E. Smith has explained in that case how the object of the registration law being to afford notoriety to instruments relating to immoveable property, the circumstance that a document has been, in fact, registered, satisfies the object at which the statute aimed. Here the deed of gift was registered on the 5th of January, 1886, the object of the registration law was satisfied, and there was notice from that time that such instrument was in existence. I am therefore of opinion that this document, bearing as it did a registration certificate, was registered within the meaning of s. 60 of the Registration Act, that under para. 2 of that section it became admissible in evidence, and that there is nothing in s. 49 which militates with that view or interferes to prevent the operation of the second paragraph of s. 60. I think that the learned Judge was wrong in holding that this document was not admissible in evidence, and that the Court below ought to have looked at it and dealt with it to the extent it deserved.

(1) L. R., 4 I. A. 166.

1889

HARDEI v. RAM LAL.

The second question is, are there materials before us which sustain the inference that the donee Musammat Hardei obtained possession under the deed of gift. Looking to the matters detailed by the learned Judge and to all the facts stated in the judgment, it seems to me they are consistent with the plaintiff having received possession under the deed of gift, at any rate there are no facts inconsistent with that view, and I think we may fairly assume that she did have possession.

With regard to the finding as to the wall, that seems to be more or less in accordance with what was found by the first Court. I would suggest that the proper order to be made is that the appeal of the plaintiff being allowed and the decree of the learned Judge set aside, that of the first Court should be restored, and the plaintiff-appellant will have her costs in all the Courts.

EDGE, C.J.—I am of the same opinion, and for the same reasons as given by my brother Straight.

TYRRELL, J.—I concur.

Appeal allowed.

APPELLATE CIVIL.

1889
January 28.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

IMTIAZ BANO (PLAINTIFF) *v.* LATAFAT-UN-NISSA AND OTHERS (DEFENDANTS).*

Partition—Question of title—Act XIX of 1873 (*North-Western Provinces Land Revenue Act*), *s.* 113—*Appeal from order under first part of s.* 113—*Practice—Successful preliminary objection to appeal—Costs.*

No appeal lies to the High Court from a decision of a Collector or Assistant Collector under the first part of s. 113 of the North-Western Provinces, Land Revenue Act (XIX of 1873, declining to grant an application for partition until the question in dispute has been determined by a competent Court.

Where a preliminary objection was successfully taken to the hearing of an appeal, the High Court refused to follow the practice adopted in bankruptcy appeals in England by depriving the respondent of costs on the dismissal of the appeal on the ground that the appellant had no previous notice of the preliminary objection. *Ex parte Brooks* (1), and *ex parte Blease* (2) referred to.

*First Appeal No. 107 of 1887 from a decree of Munshi Gursaran Das, Deputy Collector of Budaun, dated the 22nd May, 1887.

(1) L. R., 13 Q. B. D., 42. (2) L.R., 14 Q. B. D., 123.