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think that he can, and that is the only course open to him. The first paragraph of s. 295 and clauses (a) and (b) have reference only to sales in execution of simple money-decrees, and to the mode in which sale-proceeds are to be rateably distributed among simple money-decree-holders. The provisos contained in clauses (a) and (b) declare the incompetence of a mortgagee or incumbrancer, as such, to share in any surplus proceeds arising, when property is sold subject to his mortgage or charge. But the alternative is afforded him of consenting to the property being sold free of his mortgage and charge, in which case the Court may give him the same right against the sale-proceeds as he had against the property sold.

In the case before us, the decree, in execution of which the one-anna share of mauza Sheosara was sold, was not a simple money-decree, and therefore in our opinion those portions of s. 295 to which we have adverted are inapplicable. It remains to be seen whether clause (c) supports the contention of the appellants. That no doubt has reference to a sale in execution enforcing a charge, but it will be noticed at once that in distributing the sale-proceeds, the discharge of subsequent and not prior incumbrances is alone taken into account. In this view of the matter we think that the main plea relied on by the appellants fails; and concurring generally with the decisions arrived at by the lower Courts, we dismiss the appeal with costs.

*Appeal dismissed.*

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 May 31.

## FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst and Mr. Justice Tyrrell.*

MASARAT-UN-NISSA (DEFENDANT) v. ADIT RAM (PLAINTIFF).\*

*Sale-certificate—Registration—Act III of 1877 (Registration Act), s. 17(b)  
 —Civil Procedure Code, s. 316.*

*Held* that a sale-certificate granted under s. 316 of the Civil Procedure Code is not a document the registration of which is compulsory under the Registration Act, 1877, s. 17 (b).

\* First Appeal No. 127 of 1882, from an order of Maulvi Nasir Ali Khan, Subordinate Judge of Moradabad, dated the 16th June, 1882.

THE plaintiff in this suit claimed possession of a moiety of a certain house and some land adjoining. He alleged that he had purchased the property at a sale in execution of a decree and obtained a sale-certificate; that before the certificate could be registered, it had been lost; and that before he could obtain a duplicate thereof, the time allowed by law for the registration of a sale-certificate expired. The defendant, Masarat-un-nissa, representing the person whose property had been sold, contended that, as the plaintiff's certificate of sale was an instrument the registration of which was compulsory, and it had not been registered, the plaintiff had not a title to the property sold. The Court of first instance allowed this contention and dismissed the plaintiff's suit. On appeal by the plaintiff the lower appellate Court disallowed the contention and remanded the case to the Court of first instance for re-trial.

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The defendant appealed to the High Court from the order of remand, contending that the registration of the sale-certificate being compulsory, and it not being registered, the suit based thereon was not maintainable. The Divisional Bench before whom the appeal came for hearing (OLDFIELD and BRODHURST, JJ.) referred the question raised by it, namely, whether, a sale-certificate, granted to purchaser at a sale in execution of a decree under s. 316 of the Civil Procedure Code, is an instrument the registration of which is compulsory under s. 17 (b) of the Registration Act, 1877, to the Full Bench.

Munshi *Hanuman Prasad*, for the appellant.

Pandit *Bishambhar Nath*, for the respondent.

The following opinions were delivered by the Full Bench :—

STUART, C. J.—My answer to this reference is, that a certificate of sale, granted under s. 316 of the Code of Civil Procedure, does not require registration as provided by s. 17 of the Registration Act. The term “registration,” as it is used in Act III of 1877, does not apply to the procedure provided for sale-certificates, although, as will be presently seen, that procedure partakes of the character and purpose of registration.

The documents, the registration of which is compulsory under s. 17 of the Registration Act, are instruments brought into exist-

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ence by the act of private parties themselves, the publication and preservation of which can alone be secured by means of their registration; but a sale-certificate is not such an instrument but an act of the Court granting it; and as regards its publication and preservation it is in this position:—S. 316 of the Civil Procedure Code provides that: “Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before; provided that the decree under which the sale took place was still subsisting at that date.” But although of itself it constitutes a title to the property sold, the sale-certificate is not to be left merely in the private custody of the purchaser, for by s. 89 of the Registration Act, as amended by Act XII of 1879, it is provided that “every Court granting a certificate under s. 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer, within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1,” which Book 1 is directed by s. 51 of the same Act to be kept as a “register of non-testamentary documents relating to immoveable property.”

It thus appears that sale-certificates are by the Registration Act subjected to a procedure which is tantamount to, if it was not intended as a substitute for, registration, that is, such registration as is referred to by s. 17 of the Registration Act, and that such procedure is compulsory and not discretionary, but it is quite a different question whether sale-certificates have any place among the documents and instruments, the registration of which is compulsory under that section. I am quite clear that they are not among such documents and instruments.

I may add that under the general rules and circulars of this Court (page 189), revised and published so late as August last, certificates of sale are among those documents which are not only exempted from being destroyed, but are ordered to be “retained permanently.” Although, therefore, a certificate of sale does not require the registration provided by s. 17 of the Registration

Act, every object obtained by registration is secured to sale-certificates without that formality.

TYRRELL, J.—I concur in the answer recorded by the learned Chief Justice.

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STRAIGHT, OLDFIELD, and BRODHURST, JJ.—The primary question to be considered is, whether a sale-certificate, granted to an auction purchaser under s. 316 of the Procedure Code by a Court executing a decree, is an instrument within the meaning of clause (b) of s. 17 of the Registration Act, 1877. Under Act VIII of 1859, s. 259, which declared that “such certificate shall be taken and deemed to be a valid transfer of such right, title and interest,” read with s. 17 of the then Registration Law (VIII of 1871), the High Courts of Madras, Bombay, and this Court held, on several occasions, that sale-certificates were registrable, though the Calcutta Court expressed a different view, which ultimately found expression in the Full Bench ruling reported in the Indian Law Reports, 9 Calc., 82. We, however, are only concerned with the Procedure and Registration Acts now in force, and upon the construction of some of the sections therein contained must the answer to this reference hinge. Turning, first of all, to s. 316, as it originally stood in Act X of 1877, it ran as follows:—“When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate, stating the name of the person who, at the time of sale, is declared to be the purchaser, and the date of such sale.” Here it will be observed the old words of Act VIII of 1859 “shall be taken and deemed to be a valid transfer, &c.,” do not appear. It would seem, however, that this section was either too vague or too general in its terms, and difficulties arose as to what was the precise date at which the estate vested in the auction-purchaser, and consequently it was wholly repealed by s. 49 of Act XII of 1879. This latter Act, it is also important to notice, amended s. 89 of the Registration Act, by introducing the second paragraph now to be found in it, requiring the Court granting a certificate of sale under the Procedure Code to send a copy of it to the registering officer, who *shall* file such copy in his Book No. 1.” S. 316 of the Procedure Code now provides that “when a sale of immoveable property has

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become absolute in manner aforesaid, the Court shall grant a certificate, stating the property sold and the name of the person who, at the time of sale, is declared to be the purchaser. Such certificate shall bear the date of the confirmation of sale; and *so far as regards the parties to the suit and persons claiming through or under them*, the title to the property shall vest in the purchaser from the date of such certificate and not before." The words in italics seem to indicate that as between the decree-holder, the judgment-debtor, and the auction-purchaser the sale-certificate is conclusive as to the date when the title of the latter vested. But coming back to the real question—Is this sale-certificate an instrument requiring registration in order to secure the title of the person to whom it is granted? Undoubtedly under the present Stamp Law it is treated as akin to a conveyance, and the duty to be paid has to be calculated upon the amount of the purchase-money. This, however, does not assist towards a solution of the difficulty, and we must turn to s. 17 of the Registration Act itself. Looking to the terms of that section, we think that the expression "executed after the passing of this Act" is not a very happy or appropriate one to apply to a sale certificate drawn up according to Form 150 of the Procedure Code, and granted to an auction-purchaser under s. 316. The words "execute" and "execution" in reference to deeds and other instruments have a well-understood legal meaning, an example of which is to be found in ss. 261 and 262 of the Code of Procedure, and it will, we think, be conceded that it would scarcely be correct to speak of a certificate of guardianship or to collect debts granted by a District Judge as having been "executed" by him. Still, putting aside any technical objections to the words "executed," a glance at other portions of the Registration Act, as, for instance, ss. 34 and 35, relating to the inquiry before the registering officer, and s. 53, dealing with the particulars required to be indorsed on documents admitted to registration, cannot have any possible application to sale-certificates. The same observation may be made with regard to Part XII, dealing with refusal to register, for under s. 89, paragraph 2, the registering officer has no option or discretion in the matter when the copy of a sale-certificate is forwarded to him by the Civil Court, as the words are "shall file in his Book No. 1," which is the "register of non-testamentary documents relat-

ing to immoveable property," wherein by s. 51 "shall be entered or filed all documents or memoranda registered under ss. 17, 18, and 89, which relate to immoveable property."

Having given the matter our best consideration, we have come to the conclusion that under the present law a sale-certificate is not an instrument of the kind mentioned in cl. (b) of s. 17 of Act III of 1877, and is not compulsorily registrable. It is true it is not in terms exempted like a certificate under the Land Improvement Act, 1871, which would have been the simplest thing to do; but looking to the language of s. 89, paragraph 2, and the mention made thereof in ss. 32, 34 and 51, we think that such registration, as is required by law, is to be effected by the Court granting it. Seeing that all the authentication of, and publicity to, a document relating to the transfer or mortgage of immoveable property, aimed at by the Registration Act, is secured through the medium of the Civil Court, it is difficult to understand the object of, or necessity for, registration of the same instrument a second time. Of course an auction-purchaser, who desires to make himself secure from the operation of s. 50 of the Registration Act, and to guard against the Court's neglecting its duty, may register his sale-certificate and so protect himself from being superseded by subsequent registered documents in respect of the same property. Our answer to the reference must therefore be that indicated in the preceding observation, namely, that a sale-certificate granted under s. 316 of the Civil Procedure Code is not compulsorily registrable.

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### APPELLATE CIVIL.

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June 11.

*Before Mr. Justice Straight and Mr. Oldfield.*

PARSHADI LAL AND OTHERS (DEFENDANTS) v. MUHAMMAD  
ZAIN-UL-ABDIN (PLAINTIFF).\*

MUHAMMAD ASHGAR ALI (DEFENDANT) v. MUHAMMAD  
ZAIN-UL-ABDIN (PLAINTIFF).†

*Suit to set aside execution-sale—Suit for possession of immoveable property sold in execution of decree—Limitation—Act IX of 1871 (Limitation Act), sch. ii, No. 14—Act XV of 1877 (Limitation Act), sch. ii, No. 12.*

*P obtained a decree against M in April, 1874, in execution of which property belonging to the latter was sold in 1874, 1875 and 1876. In March,*

\* First Appeal No. 64 of 1882, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Moradabad, dated the 16th March, 1882.

† First Appeal No. 65 of 1882, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Moradabad, dated the 16th March, 1882.