itself to overbalance the evidence which appears to their Lordships to be generally satisfactory in proof of the validity of the bond.

Then, assuming the bond to be genuine, it is hardly necessary in this case to determine whether the subsequent sale would, if it were a really valid sale, prevail against the bond, for it appears very clear to their Lordships that the sale was a sham; in fact, that it was no real sale, and there is no satisfactory evidence of a farthing of money being paid under it, and it looks simply like a pretended sale made for the express purpose of defrauding the defendant's creditors. Their Lordships are of opinion that the defendant has produced no evidence at all which really is of any value in contradiction to the case of the plaintiff.

Their Lordships will recommend to Her Majesty that the judgment of the High Court should be reversed, and the judgment of the Principal Sudder Ameen should be affirmed and that the plaintiff should have the costs before the High Court, and also the costs of this appeal.

Judgment reversed.

Agent for appellant: Mr. *Wilson.*

Agent for respondents: Messrs. *Watkins* and *Lattey.*

FATI CHAND SAHU (PLAINTIFF) *v.* LILAMBER SING DAS AND OTHERS (DEFENDANTS).

P. C.* 1871 *July.* 3.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Registration of Deeds – Act XX of 1866.

Where a deed, which ought to be registered, is refused registration, the party agerieved should proceed under s. 84 of Act XX of 1866 (1); and if this course is not pursued. he cannot make use of the document as evidence in a civil suit brought by him to enforce specific performance of the terms of the deed, and to set aside a subsequent deed as fraudulent.

See also 11 B. L. R. 408. I. L. R. 2 Cal 82.

* *Present:*—THE RIGHT HON'BLE SIR JAMES W. COLVILE, LORD JUSTICE JAMES LORD JUSTICE MELLISH, AND SIR LAWRENCE PEEL.

(1) See Act VIII of 1872, s. 72.

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FATI CHAND SAHU v. LILAMBER SING DAS.

THIS was an appeal from a decision of the High Court (Kemp and Phear, JJ.), dated 30th March 1868, reversing a decision of the Principal Sudder Ameen of Bhaugulpore, dated 26th June 1867.

The case of the plaintiff was that the respondents, being in difficulties, asked him to buy from them some land, which he agreed to do for a sum of Rs. 22,500, which sum the appellant then paid. The respondents being anxious to get the money at once, and there being a difficulty in getting a stamp of the proper amount, the following agreement was drawn up and signed by three of the respondents for themselves and their brother :—

"Whereas Mauzas Baeeser *asli*' (original) with its '*dakhilli*' (dependencies), being a $7\frac{1}{2}$ annas share out of the entire 16 annas, the sudder jumma whereof is 260 rupees and 3 annas, $4\frac{1}{2}$, and *kamar-kusha* on account of the jote of Goormaitha, comprisiug 14 bigas, 1 kata, 5 dhurs of land, the sudder jumma whereof is, owing to a *batwara*, Rs. 5, and *kamar-kushai*, together with 50 bigas of land, the sudder jumma whereof, owing to the *batwara*, amounts to Rs. 17, and the *kamat* is the purchase of Haridhun Misra, the number of all of which mauzas is 3,863 in Zilla Bhaugulpore together with the fisheries, right to fruit, forest rights, tufts of bamboo trees of mango and jack, both barren and productive, and all the rights to the zemindari acquired by our ancestors, which have up to the present moment been in our possession and holding, without the co-partnership of any, the whole and entire of the said mauzas and *kamats* we have sold or Rs. 22,500, a moiety of which is Rs. 11,250 to Fati Chand Sahu, son of Narayan Sahu; out of the Rs. 22,500 we have received Rs. 7,500 for satisfaction of the decree of Madan Lal Das, plaintiff, decree-holder. The balance Rs. 15,00 we made a transfer to Colonel Hamdil, on account of the mortgage of the mauzas and *kamats* aforesaid. I legally declare and give in writing in regard thereto that I will excute a proper deed of sale within a month from this time. We have executed an *ikrarnama* for the same that it may be useful when required, and when a proper stamp comes, we will draw up the real deed of sale. We shall raise no objections therein. Should we raise objections or excuses, the operation of the law will then be brought to bear. Dated 2nd Aswin 1274 (25th September 1866.)'

This document was presented for registration on the 2nd

November 1866, whereupon the respondents appeared before thr Sub-Registrar, and denied that they had executed it, in consequence of which the Sub-Registrar, on the 15th November 1866, refused to register it, and his order was affirmed on the 5th December 1866 by the Registrar of the district.

On the 20th November, a deed, which the appellant impeached as a fraud, and which was so considered by the Court of first instance, was executed by the respondents who appeared and one Koer Srinandan Sing, selling to the latter the premises in dispute. This was registered on the 28th November 1866.

Immediately after the decision of the Registrarrefusing to register the appellant's document, the respondents refused to execute a bill of sale, or to give possession of the premises to the appellant, and the latter, thereupon, commenced the suit now under appeal, seeking for specific performance by having a deed of sale executed and registered; he also sought to obtain possession of the property and set aside the deed of the 20th November 1866.

The respondent, Koer Srinandan Sing, and the other respondents, put in separate written statements, the former relying on the deed of the 20th November, and on the appellant's agreement not being registered; the latter also, relying on the deed of the 20th November 1866, and impeaching the plaintiff's claim as fabricated and false.

The Principal Sudder Ameen laid down as issues for trial 1st, the truth of the appellant's *ikrar*; 2nd, whether the deed of the 20th November was *bonâ ade* or collusive; 3rd, whether, the appellant was entitled to a decree for specific performance.

The respondents objected that the appellant's *ikrar* was inadmissible in evidence, as being a document which Act XX of 1866 required to be registered: and the following is the passage of the Principal Sudder Ameen's decision on that point:—

"It is objected to the plaintiff's *ikrar* that it cannot be received in evidence as it was not registered, and therefore the plaintiff's case falls to the ground. S. 49, Act XX of 1866, makes it imperative that no instrument is to be received in evidence, the registration of which is

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compulsory under s. 17, but which has not been registered. As the plaintiff's *ikrar* is an instrument which purports to extinguish, &c, title to immoveable property of more than Rs, 100 value, so it should have been registered. On the contrary, it is argued that the *ikrar* in question is not an instrument which creates any title, but is merely preliminary to it. On referring to s. 18 of the Registration Act, it is found that conditions of sale are rxcepted from compulsory registration. It may be said that the *ikrar* is by itself a complete instrument, but its completeness is contingent upon the execution of an actual deed of sale; and as that instrument has not been executed, so the *ikrar* cannot be construed as extinguishing the right and title to land. That this construction is the correct one, is supported by the view taken of such deeds by the High Court; see *Bunwaree Lal* v. *Sungum Lal* (1) The Judges observe that it is impossibls that the Legislature could have intended this provision (compulsory registration) to apply to deeds which are merely preliminary to the main contract or engagement; or that deeds which step in as mere parts of a transaction were intended to be registered before they bould be used as evidence. In the case of *Ramtonoo Surmah Sircar* v. *Gour Chunder Surmah Sirkar* (2), the Judges observe that a deed which was simply a contract to sell land at some future time on receipt of a certain sum not then paid, did not require registration. From the above it is clear that the *ikrar* of the plaintiff also does not require registration."

The Principal Sudder Ameen, having determined that he was entitled to receive the *ikrar* as evidence, decided all the issues in the plaintiff's favor, and on the 26th of June 1867, passed a decree declaring him entitled to the relief sought, and to a deed of sale of the property in dispute, and also to possession of the property.

On appeal the High Court reversed that decision, giving the following judgment:—

"The plaint sues the defendants to enforce the execution by them of a deed of absolute sale, and to obtain an order for its registration, and also to obtain possession of the property the subject of the sale. To establish that the defendant had agreed to execute the bill of absolute sale which he sues for, the plaintiff puts in a document said to be signed by the defendants.

On consideration of the terms of this document, it appears to us

(1) 7 W. R., 280 (2) 3 W. R., 64.

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that it exhibits a contract by which the defendants express that they have sold to the plaintiff, for a consideration therein mentioned, the property in question, and further undertake to execute a conveyance of the same within a month. In other words, it is an instrument, the purport of which is to give the plaintiff an interest in certain immoveable property, within the meaning of cl. 2 of s. 17 of Act XX of 1866; and therefore by the provisions of s. 49 of the same Act, it is not receivable in evidence in any civil proceedings in any Court, unless it is registered according to the provisions of the Act. But this document is not registered, and therefore we are unable to look at it. It follows that as without this evidence the plaintiff cannot make out his case, the plaintiff's suit must be dismissed. Accordingly we reverse the decision of the Lower Court, and dismiss the plaintiff's suit with costs."

Against that decision the plaintiff appealed to England.

Mr. *J. D. Bell* for the appellant.—The case is one of peculiar hardship. The document was only the commencement of the proceeding, and was to be followed by the deed of sale. Under the old Acts XIX of 1843 and XVI of 1864, registration would not be necessary—*Ramtonoo Surmah Sircar* v. *Gour Chunder Surmah Sircar* (1) and *Bunwaree Lal* v. *Sungum Lal* (2). Even if it did require registration, the parties cannot take advantage of their own fraud; and this suit is in fact to declare the subsequent deed fraudulent and to prevent its registration giving it priority. If this decision is sound, it opens the door to fraud, as the *factum* of the document cannot be proved, save in a suit like this. But even if the deed were rightly rejected, there was sufficient evidence to entitle the Principal Sudder Ameen to decree as he did; and according to the principles of the Evidence Act (II of 1855), s. 57, the Court of Appeal ought not to have reversed that decree; and it is competent to the Board to affirm the decision of the Court below, or to refer it back to the High Court to take the whole evidence into consideration independent of the deed.

Mr. *Doyne* for the respondent was not called upon.

Their LORDSHIPS delivered the following judgment:—

(1) 3 W. R., 64. (2) 7 W. R., 280.

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In this case the appellant brought his suit, which was in the nature of a bill for specific performance, claiming to have the contract entered into by the instrument in question carried out, and, on the footing of that, a deed of absolute sale executed; and he added that the suit was also for issuing "an order for its registration." Their Lordships understand those words to import a prayer that the deed of absolute sale when executed might be ordered to be registered, and not to point to the registration of the instrument upon which the suit was brought. This prayer was probably inserted with a view to meet the difficulties which it was apprehended might be occasioned by the prior registration of the defendant's document of date subsequent to that of the instrument on which the appellant sued. The Court of first instance found that this instrument was not one which the Registration Act now in force required to be registered, admitted it accordingly in evidence, and upon the merits made a decree in favor of the plaintiff. The case then went by appeal to the High Court, and the objection was there taken that the instrument being one which the Act requires to be registered, and which had not been registered, it was not receivable in evidence, and that therefore there was no foundation for the plaintiff's suit. The decision of the Court below was accordingly reversed, and the suit dismissed with costs. The appeal before us is against that decision.

It appears to their Lordships that, although this case is undoubtedly an extremely hard one, they are bound to affirm the decree of the High Court. The Registration Act recently passed in India is extremely stringent. Their Lordships have, in the first place, no doubt whatever that the instrument in question is one which, by the 17th section of the Act, is required to be registered; that it is an instrument acknowledging the payment of the consideration-money for what was to be ultimately an absolute sale of the property in question, for what in equity did presently operate as a sale of the property. The 49th section of the Act says that no document that has not been registered under the Act, supposing it is one which ought to be registered, is receivable in evidence. The procedure which the Act prescribes is of this kind: the party see-

ng to register a deed is, under the 36th section, to go first before the Registrar or, as in this case, a Sub-Registrar. If the Sub-registrar refuses to register the deed, there is then an appeal from his refusal, upon whatever reasons it is founded, to the Registrar, the next higher officer ; and if that person confirms the order refusing the registration, the 84th section gives to the party aggrieved the power of going by petition to the Zilla Judge. In the present case the Sub-Registrar, and afterwards the Registrar, refused to register the instrument, because the parties, the respondents, by whom it purported to have been executed, denied that they had executed it. It has been argued that the Act affords no means for trying such an issue as was thus raised ; and consequently that, unless the unregistered instrument be admitted in evidence in a regular suit wherein the fact of its execution can be tried, the right of the party claiming under it would be defeated by the false and dishonest denial of his own signature by the opposite party. Their Lordships, however, looking to the words of the 84th section and the form of the petition given in the schedule and in particular to the fourth paragraph of that form, which contains the words "the said C. D. appeared personally before the Registrar and falsely denied the execution of such instrument," think that the Zilla Judge would have jurisdiction to determine such a question. Power is expressly given to him to summon the parties, and their Lordships imagine that there must also be power to summon witnesses, if witnesses should be necessary. How the Zilla Judges may deal with this statutory jurisdiction, their Lordships are unable to say. It seems, however, reasonable to suppose that, if they saw that a *primâ facie* case of execution of the deed was made out, they would direct the document to be registered, and refer the parties to try the question of forgery or non-forgery in a regular suit. Such a decision would not finally bind the rights of the party denying the execution of the document, and, on the other hand it would not preclude the opposite party from proving in a less summary proceeding that the denial was false. Their Lordships must assume, in the absence of any proof to the contrary, that the Judges exercise this jurisdiction in a reasonable and proper manner.

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Well, then, how do the facts stand upon this case? The appellant went before the Sub-Registrar, and he appealed to the Registrar. He then, unfortunately for himself, through bad advice or some other cause, omitted to proceed as the Act directs under the 84th section, in which case he might have obtained the registration of the deed in the way I have suggested and brought this suit relying on a non registered deed. He failed to pursue the remedies given him by the Act, or at least to exhaust those remedies. It seems impossible to their Lordships, under these circumstances, to say that, acting under the provisions of a very useful, though stringent, statute, the Judges of the High Court have miscarried in ruling that the document, not having been registered, was inadmissible in evidence, and that the plaintiff's suit had wholly failed. Their Lordships feel that this may be a very hard case; they would willingly have relieved the party if they could, but to make any special order, such as that suggested by Mr. Bell, seems to their Lordships to be beyond the functions and province of an Appellate Court. It may be that the appellant may be able partially to obtain relief, since part of the consideration-money seems to be still in his hands. Their Lordships, however, dealing with this appeal, have but one course before them, which is humbly to recommend Her Majesty to dismiss the appeal with costs.

Appeal dismissed.

Agents for the appellant: Messrs. *Clarke, Sen,* and *Rawlins.*

Agent for the respondents: Mr. *Barrow.*