

provisions of Section 50 Act XX of 1866 ; or, in other words, that the transaction was not *bonâ fide*, and therefore the plaintiff's deed of sale, though it was registered, ought not to have priority. Such was the object of the law in Act XIX of 1843 and is that of Act XX of 1866, and it would be utterly subversive of justice if fraudulent acts like these be permitted to over-ride a genuine and a *bonâ fide* transaction. In addition, I would remark that the defendant was in possession as a tenant and it is not shewn that he was a tenant-at-will.

I would dismiss this special appeal with costs.

*Markby, J.*—I also agree in dismissing this appeal. The really important point for us to decide, is whether the second defendant can maintain his title under his purchase of the 2nd January 1868, which was prior to the plaintiff's purchase of the 8th March 1868. The contention is that because the plaintiff's purchase was registered, therefore the defendant's purchase must go for nothing. We find that the defendant is in actual possession of the lands, and the Court finds most distinctly that the title on which the plaintiff seeks to turn him out, although it was registered, was, as I read the judgment, the result of a fraud contrived by the plaintiff and his vendor conjointly, and therefore, whether it was registered or not, it was absolutely useless as against the defendant.

The 3rd June 1870.

*Present :*

The Hon'ble Sir Richard Couch, *Kt.*, Chief Justice, and the Hon'ble F. B. Kemp, Judge.

**Section 240 Act VIII. 1859—Attachment—Alienation.**

Case No. 2994 of 1869.

*Special Appeal from a decision passed by the Judge of Bhaugulpore, dated the 14th September 1869, reversing a decision of the Subordinate Judge of that District, dated the 14th May 1866.*

Ram Churn Lall and another (Plaintiffs)  
*Appellants,*

*versus*

Jhubboo Sahoo and others (Defendants)  
*Respondents.*

*Mr. C. Gregory for Appellants.*

*Baboo Mohinee Mohun Roy for Respondents.*

An alienation which is null and void because made whilst an attachment was subsisting, cannot be validated by the removal of the attachment.

*Couch, C. J.*—In this case, the mortgage to the plaintiff was made on the 3rd of January 1863, while the attachment, was subsisting. It is not necessary, we think, to give any opinion as to whether the striking off of the execution case in the manner which appears in the proceedings operated as a removal of the attachment or not. If it were necessary for us to determine that, we are strongly inclined to think that we should hold that it did not, but we abstain from giving any opinion upon that point. Then this mortgage being made whilst the attachment was subsisting, Section 240 of Act VIII of 1859 says that any alienation of the property attached, whether by sale, gift, or otherwise, during the continuance of the attachment, shall be null and void. We think upon these words it is clear that the removal of the attachment would not operate so as to render an alienation made whilst the attachment was subsisting a valid one. It could not have such a retrospective effect. The alienation is said in Section 240 to be null and void, and if it is null and void it cannot be validated by the removal of the attachment.

With regard to the argument derived from Section 245, if the decision of this Court in the case of Anund Lull Dass *versus* Radha Mohun Shaw and others (Weekly Reporter, Volume XI), which has been appealed against to the Privy Council, stands, Section 245 cannot apply, because, if the alienation is only null and void as against the attaching creditor, and he withdraws the attachment under Section 245 on the decree having been satisfied, there can be nobody to impeach the alienation. But if it should be held that the opinion of Mr. Justice Markby is the correct one, and that the alienation is null and void against every body, there may possibly be some foundation for the argument based on Section 245. We are inclined to think that the circumstance that it would so operate (if Mr. Justice Markby's construction is correct) is an argument against its being so, and that the construction put upon that Section by the majority of the Court is the correct one.

The decree of the lower Court must be affirmed with costs.