"*karbar* being carried on by the plaintiff "and defendant in the shares of 11 annas "and 5 annas respectively. The evidence "of the said Romanath is not worthy of "credit, for he has admitted in his deposi- "tion that he was employed by the plaintiff. "Consequently, he being a dependant of the "plaintiff, it is not surprising that he should "give evidence in his favor." He discredits that witness simply from the circumstance of his being what he calls a dependant of the plaintiff. There, we think, he was wrong, because in many cases the plaintiff could only call his servants or dependants to prove the books that were kept by them; and to say that the circumstance of such witnesses being servants or dependants of the plaintiff of itself disentitles them to credit would be a great injustice. The Subordinate Judge ought to have looked to the circumstances and facts offered for his consideration in order to ascertain whether this witness was worthy of credit or not. This might not be an error in law such as would afford sufficient ground for special appeal, but it is not at all the right way to deal with the evidence in the case.

The Subordinate Judge further says— "If, as alleged by the plaintiff, the *karbar* "was jointly carried on by the parties, both "of them, and not the plaintiff alone, would "have been known to the outside public as "the owners of the same." That is the same mistake again. It is not at all necessary that both parties should be known to the outside public as carrying on the business in partnership. It may be that one of them would be known to the public whilst the other would not be so; and from the nature of this case it is very possible that that would be the state of things, that the defendant who was the working-man, if I may so call him the man who understood the mechanical part of the business, would be employed in that part of it, and would not therefore be known to the public as a partner, whilst the plaintiff who collected the debts, carried on the suits, transacted business with the public and superintended the keeping of the books, would be the person known to the world. The way in which the Subordinate Judge has dealt with this case appears to be entirely wrong and erroneous in point of law. His decree must be reversed, and what appears to be a very good decree of the Moonsiff allowed to stand.

This appeal will be decreed with costs.

The 3rd June 1870.

Present:

The Hon'ble H. V. Bayley and W. Markby, *Judges.*

Section 50 Act XX of 1866—Registration—Fraud.

Case No. 2222 of 1869.

Special Appeal from a decision passed by the Judge of Patna, dated the 17th June 1869, *reversing a decision of the Sudder Moonsiff of that District, dated the* 18*th November* 1868.

Bhikdharee Singh (Plaintiff) *Appellant,*

versus

Kanhya Lall and others (Defendants) *Respondents.*

Baboo Bama Churn Banerjee for Appellant.

Moonshee Mahomed Yusuf for Respondents.

In a suit for possession and ejectment founded upon a deed of sale, where plaintiff's conduct in collusion with his vendor was found to be fraudulent, it was held that the mere fact of the deed of sale being registered gave him no priority over defendant's deed of sale which was of earlier date though unregistered.

Bayley, J.—I AM of opinion that the judgment of the Judge is quite right and that this appeal must be dismissed with costs.

The Judge finds, firstly, that there was no cause of action, and then proceeds to the main question whether the special appellant by reason of his having registered his deed of sale prior to the defendant's purchase, is entitled to a decree in this suit for possession and ejectment.

There were two defendants sued, one of whom was the vendor. He, it appears, did all that he possibly could to put the vendee in possession, and therefore the Judge gives no decree against him. The Judge also refuses to give the plaintiff any decree against the tenant defendant, because there is no evidence that the tenant refused to pay rent or denied the plaintiff's title, and because the Judge holds as a fact upon the evidence and the conduct of the parties that although the plaintiff's deed was registered, while the defendant's was not, still the whole transaction on the part of the plaintiff was of a collusive character for the purpose of fraudulently taking advantage of the

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 Lall 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.