

(1868) 08 CAL CK 0015

Calcutta High Court

Case No: Special Appeal No. 1707 of 1867

Sheikh Rahmatulla

APPELLANT

Vs

Sheikh Sariutulla Kagchi

RESPONDENT

Date of Decision: Aug. 7, 1868

Judgement

Mitter, J.

I am extremely sorry to differ from my learned and honorable colleagues. If the plaintiff, in this case, is in a position to prove that besides the bill of sale in question there was an independent parole contract, by virtue of which the land in dispute was transferred to him by the defendants, he would be entitled, in my opinion, to succeed on the strength of that contract, notwithstanding that the said bill of sale has not been registered under the provisions of the Registration Act. As X read the plaint, I see nothing in it to justify the conclusion that the plaintiff intends to rely upon a written instrument as the sole foundation of his title. On the contrary it is distinctly stated therein that the transaction in question had been completed, and even followed by actual delivery of possession before the bill of sale was executed. As far as I am aware, certain words sufficient to constitute a valid and complete transfer of property from one person to another, always pass between a vendor and a vendee in this country, even when the contract between them is reduced to writing; and I see no reason in justice or equity, why the plaintiff in this case should be precluded from showing that such words had actually passed between him and the defendants. There is no Statute of Frauds in force in this country. Parole contracts for the sale of land are expressly sanctioned by the Hindu and the Mohamedan Law, and I am unable to find any reason whatever, why such contracts should not be enforced as between the parties thereto. Assuming, however, that the bill of sale in question is the sole foundation of the plaintiff's title, I am still of opinion that he is entitled to the relief he has asked for, provided he proves the allegations set forth by him in his plaint. If these allegations are true, there can be no doubt whatever that a gross fraud has been perpetrated against him by the defendants, and that it was in consequence of this fraud that his title-deed has not

been registered by the Registrar of Assurances. The plaintiff has done everything that he was required by the law to do, and if the Registrar refused to register his bill of sale, it was because the defendants stated something before that officer which amounted substantially to a denial of its genuineness, and which therefore obliged him to refuse to register it. Under such circumstances, the defendants ought not to be, in my opinion, permitted to say that the plaintiff is not entitled to rely upon his purchase, in consequence of the provisions of the Registration Act, when it is clear that the plaintiff's failure to comply with those provisions has been owing entirely to their own misconduct. Act XX of 1866 does not require the registration of titles; it is an Act for the registration of assurances only. The object of the Legislature in passing that Act was, as I believe, to protect innocent persons dealing with landed property in this country, and not to protect dishonest vendors, who have themselves prevented their vendees from complying with its provisions. I take it to be a universal principle of justice, that no man ought to be permitted to take advantage of his own fraud; and it would be, in my opinion, a flagrant violation of this principle if we were to hold that the plaintiff in this case ought to suffer, because the defendants have succeeded in preventing him from registering his deed by their own fraudulent conduct. It is perfectly true that the words of Section 49, Act XX of 1866, are positive as far as they go; but the question we have to determine is whether the Act itself was intended by the Legislature to be applicable to a case like the present. I believe that it was not; and in advancing this position I am glad to find that I am not altogether unsupported by authority. The first authority I wish to refer to is the case of *Srinath Bhattacharji v. Ramkamal Gangopadhyaya and others*, 10 Moore, I. A., 540. decided by the Lords of the Judicial Committee. One of the questions involved in that case was, whether a deed registered under the provisions of Act XIX of 1843, (the old Registration Law), but tainted by fraud, was entitled to precedence over a prior deed not registered in conformity with that Act; and this question was determined by their Lordships in the negative. It is to be borne in mind that all that the subsequent purchaser was required to prove under that Act, in order to entitle himself to the benefit of it, was the "authenticity" or genuineness of the deed relied upon by him; but their Lordships went on to observe: "The word "authenticity" would seem, according to its natural meaning, to point merely at the exclusion of a forged deed from the benefit of the Act, but their Lordships think that it could not be intended by the Act that a deed which was tainted by fraud, although in other respects genuine, should be placed on the same footing as an honest and bond fide deed." I admit that the question determined by their Lordships is not identical with the question we are called upon to determine in this case; but the principle of construction adopted by their Lordships is equally applicable to this case, and I may even say that it is a fortiori applicable to it. A subsequent purchaser might be guilty of fraud without being guilty of having prevented the prior purchaser from securing the registration of his title-deed. But if we are to hold, that the Registration Act was not intended to apply to the case of a fraudulent purchaser, I am unable to understand, why a fraudulent vendor should be permitted to take

advantage of that Act, more especially when it appears that the non-registration of the deed relied upon by the vendee was owing not to any negligence on the part of the latter, but to the fraud and misconduct of the former. The Registration Law, I may observe, was intended more for the protection of purchasers than for that of sellers. But be this as it may, I do not see any reason whatever, why we should hold that that law is applicable to the case of a fraudulent vendor if it is not applicable to that of a fraudulent vendee. I wish to add, that it has been already decided that a subsequent fraudulent purchaser is not entitled to claim the benefit of Section 48 of Act XX of 1866,⁵ and this decision is in strict union with that of the Privy Council just now quoted by me. Now the provisions of Section 48 are as imperative as those of Section 49, I mean so far as the mere wording of those two sections is concerned; but if the penalty prescribed by the former does not apply to a case of fraud, I do not see any reason why the penalties prescribed by the latter section should be visited upon a purchaser in the predicament of the plaintiff in this case. The defendants say that the plaintiff is not entitled to rely upon his purchase, because he has failed to register his deed, the obligation to register being imperative under the law. But the answer of the plaintiff is, "it is true, I was required by the law to register my deed, but I had done all that I was required to do for that purpose, and were it not for your fraud, my deed would not have been in the condition in which it now is." I cannot conceive that a more complete and satisfactory answer could have been given by a party who is charged by his adversary with violation of the law.

2. The next authority I wish to refer to is the case of *Nawab Nazar Ali Khan v. Ajodhyam Khan* 10 Moore, I. A., 220 also decided by the Lords of the Judicial Committee. The question in that case was, whether a purchaser at a sale for arrears of revenue, under Act I of 1845, was entitled to get rid of the title of the former proprietor when the sale itself had been brought about by his own fraud. It is to be borne in mind that the title of a purchaser, at a sale for arrears of revenue, is one of the strongest known in this country; and the provisions of Act I of 1845, defining the nature and extent of that title, were as express and as imperative as they possibly could be. But their Lordships decided that the Act was never intended for the benefit of a purchaser whose purchase was tainted by fraud." If these facts cannot be displaced," their Lordships observe, "the agreement was undoubtedly a gross fraud on the mortgagor committed by both the actors, viz., Abbot and M^r Arthur. But it was argued that even if this case were true, the remedy would be, under Act I of 1845, for damages only. This argument was in conformity to the opinion of the Zillah Judge. But it is to be observed that this argument assumes the very question under discussion, which is whether the Act extends to the present case. Mr. Justice Bayley thought that the Act was not designed to protect a fraudulent purchaser. He put his decision on the ground that a man is not allowed by law to take advantage of his own wrong, and he treated the case of such a purchaser as beyond the protection intended to be given by the Act to purchasers under an auction-sale." In the same manner I say, that if the allegations of the plaintiff are true, there can be no doubt

that a gross fraud has been committed on him by the defendants, and that to argue that the plaintiff's purchase should not be recognized by the Court under the provisions of Section 49 of Act XX of 1866, is to assume the very question we have to determine, namely, whether the Act itself was intended for the protection of fraudulent vendors, in contravention of the general principle that no man ought to be allowed to take advantage of his own wrong. Their Lordships then go on to cite authorities in support of the principle referred to. "The question was considered," their Lordships proceed to observe, in the decision of the Supreme Court, in the cause so often referred to, to which this suit is alleged to be supplemental. Mr. Justice Colvile, in that judgment, whilst he declares a Government sale for arrears of revenue to give a title against all the world with certain exceptions, engrafts on that general rule this exception that a fraudulent purchase at such auction-sale, by a mortgagee, will not defeat the equity of redemption. The subject is treated in Mr. Arthur Macpherson's book on Mortgages, at page 91, who there quotes a prior decision, *Kelsall v. Freeman* Unreported of the Supreme Court to that effect. The author, now a Judge of the High Court at Calcutta, expresses a similar opinion; and as his book is one well-known and frequently consulted in India, the decision under review cannot be regarded as unsettling a previously settled state of the law, and as raising for the first time an exception to the general protection which this legislative title affords to purchasers. In support of this view, we may refer to other authorities. In the celebrated opinion of Chief Justice DeGrey, in the House of Lords, in the *Duchess of Kingston's* case, he says: "But if it was a direct and decisive sentence on the point, and as it stands, to be admitted as conclusive evidence upon the Court, and not to be impeached from within, yet like all other acts of the highest judicial authority it is impeachable from without; although it is not permitted to show that the Court were mistaken, it may be shown that they were misled." Fraud, his Lordship proceeds to state, "is an extrinsic collateral act which vitiates the most solemn proceedings of Courts of Justice." Lord Coke says: "it avoids all acts, ecclesiastical or temporal." The case of *Collins v. Blantern* 1 Smith's L. C., 301 is an authority to show that a Court will strip off all disguises from a case of fraud, and look at the transaction as it is. In addition to these authorities, it may be observed that the principle embodied in this distinction pervades the law. Under sales in market overt, the purchaser acquired a title against all the world; but this protection did not extend to a fraudulent buyer who knew that the seller had no authority to sell. If the thief who sold in market overt re-purchased the article, the defrauded owner could then assert his title against such re-acquisition. The same principle applies to Bills of Exchange and other instruments, &c." Taking this principle for my guide, I say that the Indian Registration Act was never intended for the protection of fraudulent vendors; and that, in such cases, the duty of the Court is to strip off all disguises from the transaction and to look at it as it really is.

3. The last authority I wish to quote is that of Mr. Justice Story. When I refer to authorities on the English Law, I do so with the utmost diffidence in consequence of

my own ignorance of that law; but if I have correctly understood the passage I am going to cite, the principle laid down therein appears to be exactly applicable to the circumstances of the present case. " Another exception to the statute (the Statute of Frauds)," says Mr. Justice Story, "is where the agreement is intended by the parties to be reduced to writing according to the statute, but it is prevented from being done by the fraud of one of the parties. In such a case, Courts of equity have said, that the agreement shall be specifically executed, for otherwise the statute designed to suppress fraud would be the greatest protection to it. Thus if one agreement in writing should be proposed and drawn, and another should be fraudulently and secretly brought in and executed in lieu of the former, in this and the like cases, equity will relieve. So, if instructions are given by an intended husband to prepare a marriage settlement, and he promises to have the settlement reduced to writing, and then fraudulently and secretly prevents it from being done, and the marriage takes place in consequence of false assurances and contrivances, a specific performance will be decreed." It is to be borne in mind that the requirements of the Statute of Frauds are at least as imperative (if not more so) as those of the Indian Registration Act; and if the former is not to be used for the protection of fraud, I do not see why the latter should be permitted to be used for that purpose.

4. It has been contended before us that the bill of sale in question is the primary evidence of the title set up by the plaintiff, and as that instrument is not admissible in evidence u/s 49 of Act XX of 1866, the plaintiff ought not to be permitted to prove his title by secondary evidence. The first answer I should give to this argument is, that it is based entirely upon the assumption that the bill of sale in question is not admissible in evidence. I have shown already that the provisions of the Indian Registration Act are not applicable to a case, like the present; and it is, therefore, erroneous, in my opinion, to say that the document in question is not admissible in evidence according to those provisions. I should further add, that if the rule of English Law, which prohibits the reception of secondary evidence, is to be adopted as our guide in determining Indian cases, the ends of justice absolutely require that it ought to be adopted in its integrity, i. e., subject to all its necessary limitations. Secondary evidence is excluded when the absence of the primary evidence has not been satisfactorily accounted for; but the plaintiff in the present case is in a position, as I have already observed, to give a most satisfactory and complete explanation as to why he is unable to place before the Court the primary evidence upon which his title depends. If the bill of sale in question is inadmissible in evidence, the plaintiff ought to be permitted to show that it has been rendered inadmissible by the fraud of the defendants, as he alleges. It seems to me highly unjust and inequitable to apply the general rule against the plaintiff, and at the same time to deprive him of the benefit of the exception which the framers of that rule have engrafted upon it for the ends of justice. It has been said that the document in question is actually in existence, and that, therefore, it cannot be said that the plaintiff is unable to produce it. I confess that I do not understand the force of this argument, if the

document in question is inadmissible in a Court of Justice, it is exactly the same as if it had no legal existence at all; and the plaintiff is clearly entitled, in my opinion, to show that this inadmissibility has arisen, not from his own fault, but from the fraud of his adversaries. Suppose, for instance, that the bill of sale in question had been registered, and suppose also that the defendants had fraudulently defaced or otherwise injured it in such a manner as to render it altogether illegible, would not the Court allow the plaintiff to prove its contents by secondary evidence, provided he satisfied the Court that the illegible condition of the deed is owing to the misconduct of his adversaries. To my mind it appears, that in point of principle, the case supposed by me is no way distinguishable from the case we have now to deal with; and I, therefore, think that this objection is entitled to no weight. I wish further to remark that if this objection is of any force or validity in the present case, it would be of equal force and validity in any other suit that the plaintiff may choose to bring, say, for instance, for damages. In such a suit, the plaintiff's cause of action would of course be fraud; but if the plaintiff is to be allowed to prove the sale in question, either by producing the deed or by secondary evidence, how is it that he would be in a position to prove the fraud upon which he relies. Surely it cannot be supposed for one moment that the law of the country is in such a condition that the plaintiff must go wholly without a remedy against the gross fraud, which he alleges has been committed against him by the defendants.

5. It has been further contended that the plaintiff ought to have gone up to the District Judge under the provisions of the 84th section of the Act. But I am of opinion that the omission of the plaintiff to do so is by no means fatal to his case. The Section referred to merely says, that "it shall be lawful" for any one, who feels himself aggrieved by an order of refusal passed by the Registrar of Deeds, to go up to the District Judge to secure the registration of any document in which he is interested; and it further provides that the District Judge "may, if he thinks proper," order the deed to be registered, provided he is satisfied that the party complaining before him had done every thing that he himself was required by the law to do in order to register the deed. It is clear that this section leaves it to the discretion of the party aggrieved by the order of the Registrar to go up to the District Judge if he chooses, and it also leaves it to the discretion of the District Judge to order the registration of the deed "if he thinks proper." I think, therefore, that the plaintiff was not bound to go up to the District Judge and to invoke the discretion of that officer to protect against the fraud of the defendants. At any rate, it is clear that the plaintiff in this case is willing to show what he would have been required by the District Judge to show, namely that he himself has done every thing that he was "required" by the law to do, in order to secure the registration of his deed; and I am by no means prepared to admit that the remedy prescribed by Section 84 was the only remedy available to him. The failure of the plaintiff to invoke the assistance of the District Judge, under the provisions of that section, does not, and cannot entitle the defendants to benefit by their own fraud; nor do I think that the object of the

Legislature in making those provisions was to deprive the ordinary Civil Courts of the jurisdiction which is vested in them by Section 1, Act VIII of 1859. The Legislature itself has not said so, and in the absence of an express Legislative enactment we cannot decline to exercise that jurisdiction which we are bound to exercise u/s 1, Act VIII. of 1859, and in a case of fraud. Suppose for instance that the defendants in this case, after having sold the property in dispute to the plaintiff, and having received from him the full amount of the purchase-money, had kept him in confinement until the period prescribed by Act XX. of 1866, for presenting documents for registration before the Registrar of Deeds, had expired, the District Judge could not have afforded any relief in such a case, for before that officer could exercise the discretion vested in him by Section 84, the plaintiff would be bound to show that he had done every thing that he was required by the law to do, in order to secure the registration of his deed? Can it be said that the plaintiff would go without a remedy, and remedy there would be none, not even in the shape of damages, if the plaintiff is to be prevented from proving his purchase, either by the unregistered bill of sale in question, or by secondary evidence of the transaction to which it relates? Suppose again that the plaintiff had gone up to the District Judge under the provisions of the section in question, and the District Judge had refused to exercise his discretion in his favour, what would have been the remedy of the plaintiff in such a case? Section 49, Act XX of 1866, would have then stood in his way just as much as it does in the present case. I think, therefore, that the provisions of the Registration Act are wholly inapplicable to a case of fraud like the present.

6. In conclusion, I have but one remark to make. It has been said that this is a suit merely for the declaration of title, and that the Court ought not to exercise its discretion in passing a mere declaratory decree, when it sees that the main document upon which the plaintiff relies has not been registered by law. I think, however, that if the allegations of the plaintiff are correct, there can be no doubt that a thick cloud has been cast upon his title by the gross fraud of his adversaries; and that it is absolutely necessary for the protection of that title that this cloud should be removed, as far as possible, by making a binding declaration of right between him and the defendants. The claims of third parties deriving their title through the defendants will be determined upon their own equities, but the possible existence of such claims is not, in my opinion, a sufficient ground to bar the maintenance of the present action. As between the parties to this litigation, there can be no doubt, that under the circumstances stated, a binding declaration of right is absolutely required by the ends of justice.

L.S. Jackson, J.

7. There is always considerable difficulty in answering a question which is not very distinctly put, and it appears to me that in the present case it is not quite certain what the question is which we have to answer; but I will assume that the question before us is whether, supposing the facts alleged in the plaint be true, plaintiff is

entitled to maintain his suit; and whether proofs of his allegations could be had in the Court in which he has sued, otherwise than by production of the document referred to in the plaint.

8. I wish, in the first place, to say a few words upon the question of fraud which it seems to me has introduced a good deal of complication, and which has very much coloured the argument on both sides. Under the old Law of Limitation in which plaintiffs derived certain advantages as to the time of bringing their suits on proof of violence or fraud on the part of their adversaries, it was a very common allegation made by plaintiffs that they had been unable to bring their suit earlier on account of violence and fraud on the part of the defendants; and such allegations were not proved nearly so often as they were made. In the present day, owing to the existence of Courts with limited jurisdictions, and the cognizance of particular suits being restricted to special tribunals, parties often find it advisable to recite in their plaints that fraud has been committed, such recitals being considered necessary with a view to have their case entertained by the regular Civil Courts which might otherwise have doubts as to their competency to entertain them. The allegation of fraud in the present case is probably an allegation of this nature, and was, it seems to me, intended to win the ear of the Court and to have the suit entertained. The allegation is that defendant agreed to sell to plaintiff; that the sale was intended to operate as an out-and-out sale; that he received the consideration-money; that he executed the deed and agreed to have it registered; that when defendant appeared before the Registrar of Deeds, he denied that he had received the consideration-money in full; and that the transaction was not a sale but a mortgage; that the Registrar, therefore, refused to register, and returned the deed to the defendant. Now it is true that no question as to the payment of the consideration-money in full could have arisen in this case without there being fraud, on one side or the other; but that is not what influenced the Registrar. What he considered was the defendant's denial that the document had been drawn up in conformity with the intention of the parties. It seems to me that this question might very well arise between the parties without any fraud on either side. The parties, no doubt, knew generally what they agreed to, but there might be some misunderstanding between persons not having either legal or much general education, in attempting to reduce to writing an agreement not of the most simple character. The parties could not resort to skilled persons to draft the agreement, partly because such assistance is not easily obtained in the Mofussil, and partly because the land in question is not of great value. A difference between them having arisen, the vendee wishing to obtain registration comes to the Civil Court to compel the vendor to carry out what he considers was the transaction agreed upon; and in order to get the Civil Court to entertain his suit, he thinks it right and to his advantage to make a distinct allegation of fraud. It appears to me upon the main question, that it was not the intention of the Legislature that suits should be entertained by the Civil Courts, for the purpose of doing that which the plaintiff

seeks in his plaint. He says, that by reason of the objections advanced by the defendant, which prevented the registration of the document which had been executed, injury had been done to his rights. He does not ask to obtain possession of the land, but that the Court will set aside the fraudulent objection of defendant, and ascertain the plaintiff's rights so as to declare an out-and-out purchase by him of the lands in dispute. It appears to me, that such a suit for declaration of title cannot be maintained otherwise than on proof of the specific title relied on, and that the remedy for the plaintiff here lay in the appropriate proceeding to enforce registration of his deed. Section 84 of the Registration Act provides the way by which persons desirous of enforcing registration of documents are to proceed.

9. As to the other question, whether plaintiff can give other evidence to establish his right to have the deed registered, I am of opinion that he cannot be so permitted. It has been suggested that the plaintiff did not claim to hold the land solely under the written document. I am not aware how any person could be entitled to the same land, partly on a written contract, and partly by verbal agreement; and in this suit where plaintiff sets out that defendant executed a kabala to him, on a certain date, he shows that the land could not have previously been conveyed by parole agreement, because if the land was conveyed by the parole agreement, then there was nothing left to sell. In the case of a parole contract, which it was agreed should be reduced to writing, if the parole agreement passed the land, then if the defendant refused to reduce to writing, I can understand that a suit for damages by the purchaser might lie, on the ground that he had been endamaged by such refusal.

10. It has been said, that the document, in this case, came within the exception to the ordinary rule as to secondary evidence, because it was not producible in Court. The fact is that it was producible. Setting aside the peculiar circumstance in this case, that the Registrar returned the document to the defendant, the possession of the document would be always with the plaintiff, purchaser, and it would be producible; but u/s 49 of the Act, it would not be receivable in evidence which is quite a different thing.

11. It appears to me, that there was a plain course open to the plaintiff to go to the Civil Court, and to enforce the registration of the deed, and so make it receivable in evidence; and then having done so, he might come and sue upon the deed so registered. But the present suit ought not to have been entertained by the Civil Court; and was, I think, rightly dismissed.

Sir Barnes Peacock, Kt., C.J.

12. The case appears to me to be a very clear one. I regret very much to differ from my honorable colleague who first delivered judgment, because I always consider that his opinion is entitled to very great weight. But I am forced to form my own opinion upon the subject, and I have done so, after having attentively considered

the arguments and reasons which have been urged by my honorable colleague.

13. It is not for me to show that the Registrar of Assurances acted discreetly or wisely in refusing to register the document. Nor is it for me to prove that the remedy, which the Legislature has given to a person who considers himself injured by the refusal to register a document, is the most expedient. All that I have to do, is to ascertain the intention of the Legislature by the ordinary and legal rules of interpretation; and having ascertained what that intention was, to carry it into effect.

14. The point of law referred to this Court to be determined is, as was pointed out by Mr. Justice L. S. Jackson, not very clearly defined, but I understand that the whole appeal is referred to this Bench for determination. The appeal is a special appeal, and involves merely questions of law. If the Munsiff ought to have entered into the questions of fact, the case would have to be remanded; but, if assuming all the facts stated to be true, the plaintiff is not entitled to relief) then, without further enquiry, his suit ought to be dismissed.

15. I do not concur with Mr. Justice E. Jackson, that the case might be sent back to the Munsiff to amend the plaint. Mr. Justice E. Jackson says, "I" would remand this case to the first Court to require the plaintiff to amend his "plaint by adding words to that effect," that is, to enforce registration, "and then to proceed to try the suit." I differ from my honorable colleague for two reasons; first, because a Court of Justice has no right to require a man to ask for more than he thinks fit to ask for. The plaintiff asks for relief by enforcement of the contract without registration. We might, if the law allowed us, hold that the plaintiff is entitled to relief without registration, but we have no right to tell him to ask for registration. In the next place, it appears to me that the Munsiff would not have authority in this suit, even if the plaint were amended, to require the Registering Officer to register. The Registering Officer is no party to this suit, and I think the Munsiff had no power to order him to register the deed. But even if he should order the registering officer to register the document, he would have no power to enforce the contract before registration. Section 49 of the Registration Act says, that no instrument required by Section 17 to be registered (and this is one of that nature) shall be received in evidence in any civil proceeding in any Court, or shall be acted on by any public servant, or affect any property comprised therein, unless it shall have been registered. Section 82 renders an unregistered document admissible in evidence, on the presentation and hearing of a petition of appeal against an order refusing registration, but not in a suit to compel registration. The Munsiff's order to register would not amount to registration; and if he should order the deed to be registered, he could not act upon the document or give effect to it as regards the property comprised therein, until his order for registration should be complied with.

16. There is considerable force in the argument, that unless the ordinary Courts of Judicature have power to order registration and to give relief in the same suit, or, in the case of a refusal without good cause, can give effect to the document without

registration, a party would be driven to what may be called two suits in order to obtain full relief. If he is to adopt the course of appeal pointed out in the Act, he must apply to the Judge to enforce his right to have the document registered. In that proceeding before the District Judge, all that can be "obtained is in order to register. The applicant cannot obtain an order for enforcing the document. He may be in a worse position than the plaintiff in this suit. He may not even in the case of a conveyance have got possession of the property conveyed. When he has established by means of the process pointed out by the Act, that he is entitled to register and obtain an order for registration, he must then, in case of refusal on the part of the grantor, go to the Civil Court which has jurisdiction over the matter to get the deed enforced. He is to pay only 8 annas for stamp duty upon his application to the Judge of the district to enforce registration, but he must go to the regular Court with a plaint upon the usual stamp duty to obtain full relief. I have considered whether, for the purpose of avoiding this two-fold proceeding, we might not possibly put such a construction upon the Act as Mr. Justice E. Jackson seems to have done, by holding that in the case of an unauthorized refusal to register one suit might be maintained to compel registration and to enforce the document. But the words of the Act appear to me to be too strong to allow us to put that construction upon it. I consider that the conclusion at which Mr. Justice Kemp arrived, was the correct one.

17. The suit is, in substance, for a declaration of right u/s 15 of Act VIII of 1859,⁶ it has been held, that it is not in every case that a Court is bound to give a declaration of right, or that it would be proper to do so. The plaintiff says that the vendor, the defendant, sold this property to him; that he received the purchase-money; that he put the plaintiff into possession; and that he executed the deed. Assuming, for the present purpose, that before the deed was executed there was a distinct verbal sale of the property, which between these parties, there being no Statute of Frauds, would have operated as a transfer of title if no deed had been executed, I am of opinion that when the transaction was completed by the execution of deed, the parties must be considered to have intended that the verbal sale was not to be the operative one or the conclusion of the transaction between them.

18. I agree with the remark of the Division Bench in *Manmohini Dasi v. Bishenmayi* 7 W. R., 112. where "a party comes into Court resting his claim on a written title which the law requires to be registered; he cannot, when he has failed to register, and is, in consequence, unable to use his title-deed, turn round and say I can prove my title by secondary evidence." But the plaintiff in this case wants something more. He is not satisfied to let his contract rest on the verbal contract and possession. He tells the Court that a deed was executed; that he was entitled to have that deed registered; that the defendant went before the Registrar and fraudulently stated that the deed was not intended to operate as a bill of sale, but merely as a mortgage; that the Registrar, consequently, refused to register the deed; that the declaration of the defendant and the refusal of the Registrar have cast a cloud over his title which he asks the Court to dispel by declaring that, looking to the whole of

the transaction between the parties, he is entitled absolutely to the lands. It appears to me that independently of other considerations, we ought not, unless we can say that the deed operated and was intended to operate as an absolute sale, declare upon the faith of that deed that the plaintiff had a title. If the parties did enter into a complete contract of sale before the deed, our decree will place them in a very different position from that in which they would have been if they had relied upon that verbal contract alone. By Section 48 of the Registration Act it is enacted "that all instruments duly registered under this Act, and relating to any moveable or immoveable property, shall take effect against any oral agreement or declaration relating to the same property." Now, putting the deed out of the question, if the defendant, after he had sold by oral contract, had the next day sold by deed of sale to a bond fide purchaser who had no notice of the plaintiff's contract, and such purchaser had got his deed registered, he would have taken priority over the verbal contract. So also, if we admit for the sake of argument that the deed was executed and ought to have been registered, but was not registered, if the defendant notwithstanding that deed had sold to a bond fide purchaser, and the purchaser was ignorant both of the verbal contract and of the unregistered deed, he would have priority u/s 50, which enacts that "every instrument of the kinds mentioned in Clauses 1, 2, and 3 of Section 18 (and this is one of them) shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property whether such other instrument be of the same nature as the registered instrument or not." It would have been useless as against the second bond fide purchaser who knew nothing of this deed, for the plaintiff to allege and prove that he could not register it on account of the fraud of the defendant. There would have been the plaintiff claiming under a verbal contract and an unregistered deed, and a bond fide purchaser ignorant of the verbal contract and of the unregistered deed, claiming under a registered deed, and there would be no rule of equity which could give the former preference over the latter. Memoranda of decrees are by Section 41 to be sent into the Registration Office, and if we were to declare to-day, that plaintiff has a right to the land, either by virtue of the verbal contract or by virtue of the unregistered deed, that decree of ours would have to be registered; and the decree would neither be an oral agreement u/s 48, nor an instrument u/s 50. By the interpretation clause of the Registration Act, it is said that the word "instrument" is not to include a will or an authority to adopt. A decree of this Court is not an instrument within the meaning of the Registration Act, and if we were to make a decree declaring that by virtue of an oral contract of sale, independently of the unregistered deed, the plaintiff gained a title, and the defendant should sell the estate to-morrow to a bond fide purchaser who has no knowledge whatever of any part of the transaction, or even of this litigation, the decree would take priority over a subsequent purchaser without notice. It appears to me that we should frustrate the object which the Legislature had in enacting Section 48, if we were to declare a right upon a mere verbal contract, and thus give it an effect of which the Legislature intended to deprive it. We cannot decide

whether the deed was intended to operate as a bill of sale or not, unless we receive it in evidence; nor can we declare that it operated as a bill of sale without acting upon it, and giving effect to it as regards the property comprised therein, which so long as it remains unregistered, would be contrary to the express terms of Section 49.

19. Two cases were referred to by my honorable colleague. The first is that of *Srinath Bhattacharji v. Ramkamal Gangopadhyaya and others* 10 Moore, I. A., 220. The question in that case turned upon Regulation XIX of 1843. That Act says, "that from the first day of May last, every deed of sale, or gift" of land, houses, or other real property, a memorial of which has been or shall" be duly registered according to law, shall, provided its authenticity be "established to the satisfaction of the Court, invalidate any other deed of sale "or gift for the same property which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to "the registered deed." The question turned upon the meaning of the word "authenticity," and was whether the defendant could rely upon a deed which he had obtained by fraud, and had got registered, with a view to get rid of a bond fide purchaser without notice? Their Lordships of the Privy Council say as to the second question : "The proviso is that the authenticity of the deed be established to the satisfaction of the Court. The word "authenticity" would seem, "according to its natural meaning, to point merely at the exclusion of a forged "deed from the benefit of the Act; but their Lordships think that it could "not be intended by the Act that a deed which was tainted by fraud, although in "other" respects genuine, should be placed on the same footing as an honest "and bond fide deed; but they thought that at all events a registered deed "could not be deprived of the priority given by the Act, unless fraud on the "part of the grantee were both alleged and proved." I am ready to admit, that u/s 50 of the Registration Act, the word "instrument" refers to an honest bond fide instrument, and does not include a fraudulent one. If a man should get a fraudulent deed registered before an honest one, he could not, u/s 50, rely upon that document as an instrument. It is a well-recognized maxim of law that no man can gain title by fraud. Under the Act relating to the registration of deeds and relating to lands in Middlesex, it was held that a subsequent registered deed has no priority over an unregistered one, if the man who held under the registered deed, knew of the sale to the holder of the unregistered deed. But that was on the principle that a person is not to benefit, if he purchases with notice of a prior bond fide sale.

20. The other case which was cited by my learned colleague, was also a very clear case of fraud. It is the case of *Nawab Sidhi Nazar Ali Khan v. Ajodhyaram Khan* 10 Moore, I.A., 540. There it was held, that the mortgagee in possession and another person "having sought to deprive the mortgagor of his title to redeem by means of a purchase of the mortgaged estate under an auction-sale for arrears "of revenue, which was designedly and fraudulently brought about by the act of the mortgagee in possession, who for the purpose of the fraud neglected to pay the revenue." The

Lords of the Judicial Committee say: "If these facts cannot be displaced, the agreement was, undoubtedly, a gross fraud on the mortgagor committed by both the actors in it, viz., Abbot and M. Arthur. "But it was argued that even if this case were true, the remedy under Act I" of 1845 was for damages only. This argument was in conformity to the "opinion of the Zillah Judge. But it is to be observed that it assumes the very "question under discussion which is whether the Act extends to the present" case. Mr. Justice Bayley thought that the Act was not designed to "protect a fraudulent purchaser. He puts his decision on the ground that a man" is not allowed by law to take advantage of his own wrong; and he treated "the case of such a purchaser as beyond the protection intended to be given by "the Act to purchasers under an auction-sale."

21. Both these cases turned on the principle that a man cannot obtain a right by means of fraud. But that principle does not apply to this case. It is said that defendant is claiming a right by means of fraud. Defendant is entirely passive. It is the plaintiff who wants us to declare that a verbal sale or an unregistered deed has given to the plaintiff a title; and if it gives him a title against the defendant, it will give it to him as against all persons who may purchase the same property from defendant in ignorance of the plaintiff's rights, and get their deeds registered. Suppose this land were to be sold to-day by defendant to another person without notice, could the plaintiff have a declaration of right against such purchaser, if he should register his deed? Surely not. The plaintiff is not affected by fraud, but a purchaser also ought not to be affected by defendant's fraud, assuming that in consequence of the non-registration of the plaintiff's bill of sale he should be in ignorance of the plaintiff's rights. A purchaser can always protect himself, and if he does not, it is his own fault. He should take care before he pays his purchase-money to get the deed registered, or to obtain an authenticated power from the vendor to authorize some one, in whom the purchaser has confidence, to register the deed as agent of the vendor. I have seen instances in which a purchaser has refused to pay the purchase-money before he has got the deed registered, or an authenticated power to his own attorney from the vendor appointing him the vendor's attorney to register. Section 34 of the Registration Act says: "subject to the provisions of the last preceding section, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented to the proper Registration Office by some person executing or claiming under the same, or by the representative or assign of such person or by the agent of such person, representative or assign duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned." Section 35 says: "for the purposes of the last preceding section, the powers of attorney "next hereinafter mentioned shall alone be recognized, (that is to say), if "the principal, at the time of executing the power of attorney, resides in any "part of British India in which this Act operates, a power of attorney executed "before and authenticated by the Registrar or Sub-Registrar within whose "district or sub-district the principal resides." So that if a

man in Calcutta sells lands in Lahore, he can go before the Registrar in Calcutta, and can there execute a power of attorney in favour of the attorney of the vendee who will then go to Lahore, and, as the agent of the vendor, register the deed there. To make the purchaser safe, he ought to require the vendor to admit the deed of sale before the Registrar, or get the vendor to execute an authenticated power. If the purchaser neglects this precaution, and another man gets a subsequent deed of purchase registered first, it is the first purchaser's own fault if the latter obtains priority over him. Section 35 makes a further provision; it enacts that if the person executing is in jail or sick, the Registrar or the Judge may himself go to the Jail or to the house of the person executing, and examine him, or issue a commission for his examination. It is said that a person may be imprisoned by the purchaser immediately after he has executed a deed, and by those means prevent registration; so he may put a pistol to his head, and threaten his life, unless he returns the document. But men who commit such atrocities are subject to very serious punishments under the Penal Code. The plaintiff here is seeking a declaration of right which may affect a bona fide purchaser who was not intended by the Act to be affected by an unregistered deed.

22. I have said, that it is not necessary to decide whether the Registrar acted discreetly in refusing registration. I am of opinion that he did not act discreetly, and that he has put the parties in serious difficulties by his refusal. His registering the document would not have made the sale valid or binding if it was otherwise invalid or not binding. The vendor, notwithstanding registration, could have the deed set aside or rectified if he could prove that it was fraudulent or drawn up as a bill of sale, when in fact it was intended to operate only as a mortgage. There was no necessity for refusing to register the deed. The defendant did not deny the execution, but he merely denied that the deed was intended to operate as a bill of sale. If the defendant admitted, as I understand he did, the execution of the deed, the Registrar ought to have registered the document, and left the parties to contest their rights in a Civil Court. See Section 36 of the Registration Act and Rule 86 of the Rules made under the Act. Registration does no harm; and there is, therefore, no appeal against an order of Registration, Section 81; but a refusal to register may cause much injury and inconvenience. It appears to me that so long as the deed remains unregistered, the Court cannot, in a civil proceeding, act upon it or receive it in evidence or give it any effect. The plaintiff might have appealed under Sections 82 to 84 of the Act. But the Court cannot remove the cloud from his title by giving him a declaration of right founded upon an unregistered deed, or admit an unregistered deed in evidence.

23. I am of opinion that the appeal ought to be dismissed with costs.

Macpherson, J.

24. The question which, as I understand it, we have to answer, is whether the plaintiff who sues for a declaration of his title to the land which is the subject of this

suit, can give parole evidence of the contract under which he alleges he acquired that title, the contract having been reduced to writing in the form of a kabala, or deed of sale, executed by the defendant, but not having been registered, owing to fraud on the part of the defendant. The fraud alleged (and for the purpose of the argument, I assume it to be truly alleged) is that the defendant having received the purchase-money, and having executed the deed of sale, afterwards induced the Registrar to refuse to register the deed, upon the ground (which was false in fact) that the deed did not contain a certain clause which the plaintiff had undertaken to put in it, and that he had not received the whole of the consideration-money.

25. The question is not whether a suit for specific performance of a contract to register a bill of sale will lie, or whether an action for damages for breach of contract (in not giving the plaintiff a registered deed of conveyance) will lie. If that were the question, I should probably reply that a suit for damages or a suit for specific performance would lie as against the vendor, although not as against the Registrar. The passage just now cited from Story's Equity Jurisprudence Vol. II, 6th Ed., by Mr. Justice Dwarkanath Mitter, shows that a suit for specific performance will lie. I agree with the Judges of the High Court at Agra, who in delivering judgment in a case 1 Agra H. C. R., which was heard by a Full Bench, said: "It appears to us that the Act (XVI of 1864) contained " nothing to limit or affect the right conferred by law on a purchaser to enforce "specific performance of the contract of sale, and that the Code of Civil "Procedure in the sections relating to decrees and the execution of decrees has made sufficient provision for compelling a complete performance of the "contract), whether by execution of a conveyance or by its registration, or other-"wise." The question before the Agra Court was one arising out of Act XVI of 1864, but the remarks of the Court are applicable to the present case, because the general terms in which an unregistered instrument is in that Act declared not to be receivable in evidence are very similar to the terms used in Act XX of 1866.

26. I return to the points immediately before me, whether parole evidence can be received to prove the plaintiff's contract. I have no hesitation in saying that it cannot. It is an undoubted rule of our Courts that when a contract has been reduced to writing, the contract can be proved only by the writing itself, and parole evidence of the contents of the written instrument cannot be given, except in certain special instances in which the writing is not forthcoming, and, therefore, cannot be produced.

27. It has been contended, for the plaintiff, that the defendant ought not to be permitted to benefit by his own fraud, and, therefore, ought not to be allowed to plead that oral evidence is inadmissible. Fully admitting the soundness of the general proposition that a man ought not to be allowed to benefit by his own fraud, it appears to me that that proposition is wholly foreign to the present question, which is, not whether the defendant is entitled to benefit by his own fraud, but whether the plaintiff can evade the provisions of the Registration Act, and can be

allowed, in breach of one of our most elementary rules, to give secondary or parole evidence of the contents of an instrument, which the Registration Act (Section 49) has declared expressly shall not be received in evidence, or acted on by any Court of Justice. It is admitted that the unregistered instrument itself cannot be received in evidence, yet to reject it because unregistered, is to allow the defendant to benefit by his own wrong just as much as the refusing to admit secondary evidence of the contents of the deed allows him to do so.

28. On this subject of fraud, reference has been made to the judgment of the Privy Council, in the case of *Srinath Bhattacharji v. Ramkamal Gangopadhyaya*. 10 Moore, I. A., 220. But this judgment really has no bearing on the present case; for although their Lordships say that "it could not be intended by this Act (XIX of 1843) that a deed which was tainted by fraud, though in other respects genuine, should be placed on the same footing as an honest bond fide deed," the only thing that their Lordships had to decide, so far as this part of the case was concerned, and the only thing that they did in fact decide, was, that "at all events a registered deed cannot be deprived of the priority given by the Act, unless it be both alleged and proved that there was fraud on the part of the grantee." The question under consideration there differs widely from that which we have to deal with.

29. The object of the present Registration Act XX of 1866 is to force people to register deeds of a certain class; and as the most effectual mode of compelling registration, the 49th section enacts that "no instrument" (the registration of which is compulsory) "shall be received in evidence in any civil proceeding in any Court, or shall be acted on by any public servant as defined in the Indian Penal Code, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act." The question is whether, because the defendant has behaved dishonestly, and is attempting to cheat the plaintiff, the latter can evade the express language of the Act by giving secondary evidence of an instrument, which ought to have been registered before he paid his purchase-money, and which the law says shall not be received in evidence because it is not registered. It has been argued that in this country, people in making a contract usually enter first into a verbal contract, whether they eventually put it in writing or not; and, therefore, that though there is this unregistered kabala in existence, the plaintiff may ignore it, and fall back upon the original verbal agreement. In every country, and just as much in England as in India, certain negotiations almost invariably take place before a contract is reduced to writing; and in every country, it is usual that the terms of the contract should, with more or less accuracy, be agreed on verbally before the written instrument embodying them is prepared. I am not aware that any difference whatsoever exists between natives of this country and natives of any other country, as regards contracts which have been entered into verbally, and are afterwards put in writing. When a contract has once been put in writing and signed by the parties, the written instrument contains, and is the only evidence of the contract, and the parties cannot give it the go-by, and

fall back upon the original verbal agreement. It may be that in India a title to land may be passed without writing, but when once the sale or conveyance has been embodied in a written instrument, that instrument and that instrument alone contains the contract between the parties. This question has been before me on several occasions, and the more I consider it, the more I am confirmed in the opinion which I have now expressed, and which I first expressed in the case of *Manmohini Dasi* 7 W. R., 112. The point really involved is, whether or not the Courts, by admitting parole evidence of unregistered deeds, are to assist parties in ignoring and evading the provisions of the Registration Act.

30. I attach no weight to the argument which has been pressed upon us based on the supposed hardship of the case of a bond fide purchaser, who having paid his money gets no return for it by reason of the vendor fraudulently preventing registration. A purchaser has only himself to blame if he parts with his purchase-money until he has secured the registration of his conveyance. And when obstacles are improperly thrown in the way of registration, the Act in its 82nd, 83rd, and 84th sections gives the simple and speedy means of removing these obstacles. In the case now before us, the plaintiff's proper course was to proceed under these sections. Not having availed himself of the remedy given him by the Act, I fail to see any special hardship in his being now told he is not entitled to that particular kind of remedy which he seeks in this suit.

31. On the whole, I think that as the Act expressly declares that a deed such as is the plaintiff's *kabala* shall not, if unregistered, be received in evidence, secondary evidence of its contents cannot be received.

Bayley, J.

32. This case has been referred to a Full Bench by Mr. Justice Kemp and Mr. Justice E. Jackson. Mr. Justice E. Jackson would remand the case to the first Court, with a view that the plaint might be amended to one "to enforce the contract and to have it registered." Mr. Justice Kemp would dismiss the Special Appeal, on the ground that secondary evidence of the deed of sale was not admissible; but that learned Judge observed that this view was opposed to two decisions of this Court, which he cited. *Mir Hilaluddin v. Chowdri Abdul Sattar* 9 W. R., 351 and *Bhimal Mahtun v. Mussamat Olimussa* 8 W. R., 423

33. The plaint shows, that the suit is clearly based on the deed of sale of 20th Sraban 1273 (4th August 1866), registration of which under Act XX of 1866 was sought by plaintiff, and was refused by the Registrar on the objections of the defendant. There are in the plaint some preliminary allegations as to the agreement to sell and as to the receipt of the consideration-money, but this is followed, and indeed the whole case really rests on the allegation of title by the plaintiff on the fact of the execution of the deed of absolute sale. The plaint then sets forth that on plaintiff's presenting that deed to the Sub-Registrar for the purpose of completing the title by

registration, the defendant fraudulently objected, on the ground that the deed did not, but ought to have expressed certain reservations to the effect that the property would be returned to the defendant on re-payment of the consideration-money. The plaintiff concludes by averring that owing to the above-mentioned objections of the defendant and consequent non-registration, a cloud was on the plaintiff's title which he wished to have removed by a declaration of the transaction as evidenced by the deed being one of absolute sale.

34. After the long judgments already given by my learned colleagues, I would only briefly remark that, in my opinion, Section 49, Act XX of 1866, not only prevents the kabala referred to in this case, from being received as evidence in any Civil Court, but also from having any effect in any Court on any property. The cases in the Agra High Court, Full Bench Reports, page 148, and *Manmohini Dasi v. Bishenmayi* 7 W. R., 112. clearly and strongly support me.

35. It was, in my view, open to the plaintiff, when the Sub-Registrar refused to register the deed, to have proceeded according to Sections 81 to 84 of Act XX of 1866. Section 84 allows to a party who is refused registration to petition the District (i.e. Zillah) Court, and to proceed as laid down in the law referred to. The remedy provided therein is a full and easy one against fraudulent or other objections to registration by an opponent, and so far obstructing the completeness of a title by preventing registration. The fourth paragraph of Section 84 enacts that "the Court may, if it shall think proper, "order such Registrar or Registrar General to register the document or to direct "its registration in the proper manner, and he" the (Registrar) "shall" thereupon obey such order, and shall, as far as may be practicable, follow the" procedure in Sections 66, 67, and 68⁷ and (provided the document be duly "presented for registration within thirty days after the making of such order), "the registration pursuant to such order shall take effect, as if the document had been registered, when it was duly presented for registration "to the Officer so refusing as aforesaid." If the plaintiff had so obtained an order for registration, he could proceed to establish his right and title under the deed of sale propounded by him. Supposing, however, that he had not got that order, I am far from holding that still the plaintiff might not have a remedy in a Civil Court if he sued for specific performance of an agreement to sell and to execute a conveyance and to register the same.

36. As to the plea that no man can take advantage of his own fraud, I do not think that the decisions of Her Majesty's Judicial Committee of the Privy Council, *Srinath Bhattacharji v. Ramkamal Gangopadhyaya*, 10 Moore, I. A., 220 and *Nawab Sidhi Nazar Ali Khan v. Ajodhyaram Khan* 10 Moore, I. A., 540. apply. Those were general cases of the recognition of the above ordinary rule of equity. But this is a special case of toe construction of the Registration Act XX of 1866, Sections 81 to 84, and the procedure open to plaintiff under it. I concur with Mr. Justice Kemp in holding that in this suit parole evidence to prove the deed of sale of 20th Sraban 1273 (4th August

¹Effect of non-registration of documents required to be registered.

[Sec. 49 : --No instrument required by Section 17 to be registered shall be received in evidence in any Civil Proceedings in any Court, or shall be acted on by any public servant as defined in the Indian Penal Code, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act]

²Civil Courts have cognisance of all suits unless specially barred.

Person unlawfully dispossessed of immoveable property may recover possession, notwithstanding any title that may be set up.

Suit for dispossession to be brought within six months.

Suit to establish title not to be affected.

[See. 1:--The Civil Court shall take cognizance of all suits of a Civil nature, with the exception of suite of which their cognizance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay respectively, or by any Act of the Governor-General of India in Council.]

³[Sec. 15:--If any person shall without his consent have been dispossessed of any immoveable property otherwise than by due course of law, such person or any person claiming through him shall in a suit brought to recover possession of such property be entitled to recover possession thereof, notwithstanding any other title that may be set up in such suit, provided that the suit be commenced within six months from the time of such dispossession. But nothing in this section shall bar the person from whom such possession shall have been so recovered or any other person instituting a suit to establish his title to such property, and to recover possession thereof within the period limited by this Act. (Modified by Act XXIII, S. 1861, S. 26).]

⁴[Sec 17:--The instruments next hereinafter mentioned shall be registered, provided the property to which they relate shall be situate in a District...and provided they shall have been executed on or after the date on which the said Act No. XVI of 1864 or this Act shall have come or shall come into operation (that is to say):--

5

Cl. 2:--Instruments (other than an instrument of gift) which purport or operate to create, declare, assign, limit, or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred Rupees and upwards to or in immoveable property.]

Instruments of which the registration is compulsory.

Registered Instruments relating to property to take effect against oral agreements.

[Sec. 48:--All instruments duly registered under this Act and relating to any moveable or immoveable property, shall take effect against any oral agreement or declaration relating to toe same property].

6

Declaratory suit.

[Sec. 15:--No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right, without granting consequential relief.]

7

1. The signature and addition of every person admitting the execution of the document; and, if such execution shall have been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent.
2. The signature and addition of every person who may have been examined in reference to such document under any of the provisions of this Act; and
3. Any payment of money or delivery of goods made in the presence of the Registering Officer in reference to the execution of the document, and any admission of receipt of consideration made in his presence in reference to such execution.

Particulars to be endorsed on documents admitted to Registration.

Sec. 67:--The Registering Officer shall affix the date and his signature to all endorsements mentioned in the last preceding section, relating to the same document and made in his presence on the same day.

Such endorsements to be dated and signed by Registering Officer.

Sec. 68:--After the provisions of Sections 36, 66, and 67 shall have been complied with, the Registering Officer shall endorse on the document a certificate containing the word "Registered," together with the number and page of the Book in which the document shall have been copied. Such certificate shall be signed, sealed, and dated by the Registering Officer and shall then be prima fade evidence that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement referred to in the last preceding section have occurred as therein mentioned.

Certificate showing that document has been registered, and number and page of Book in which it has been copied.

[Sec. 66:--On every document admitted to Registration there shall be endorsed from time to time the following particulars (that is to say):--