Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mitchell v. *Mathura Dass, and others, from the High Court of Judicature for the North Western Provinces of India, Allahabad; delivered June 19th*, 1885.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THEIR Lordships are of opinion that the decision of the High Court in this case was erroneous, and that it ought to be reversed.

It appears that an action was brought on the 14th June 1880, praying:—"That a decree for "establishment of right, as provided by section "283 of Act X. of 1877, be passed, with the "order that the disputed property is the property "of W. Mitchell, judgement debtor, and is liable "to be sold by auction in execution of the "Plaintiff's decree." On the 11th June 1879 the Plaintiffs obtained a decree under an arbitration award against William Mitchell. In execution of that decree a screw-house, which was in the possession of William Mitchell, was attached. Upon that attachment being made Alexander Mitchell, the father of the Defendant William, objected, and claimed that the property was not the property of William, but was the property of him, Alexander. The matter was investigated by the Court out of which the execution issued, in accordance with the provisions of the code of procedure; and having received evidence in the case, the Court decided that the property

A 18002. 125.—7/85. Wt. 2708. E. & S.

22

belonged to Alexander and not to William, and released it from execution. That Order was not appealable; but the Plaintiff, the then execution creditor, being dissatisfied with the Order, the present suit was commenced, in accordance with the provisions of the code of procedure, to have it declared that the property was the property of the son, and liable to be seized in execution; it was in substance to reverse the Order of the Court out of which the execution issued.

The way in which the father endeavoured to make out his title was this. He said that on the 25th September 1873, he purchased the property from Messrs. Nicol Fleming and Co. It appears that the deed of conveyance which he attempted to put in evidence to prove that Messrs. Nicol Fleming and Co. conveyed the property to him had not been registered. By the Registration Act—Act 3 of 1877, section 49 — it is enacted that "No document required by section 17 to be registered,"— and the document of 1873 was a document of that nature—"shall, "unless it be registered, be received as evidence "of any transaction affecting such property, or "conferring such power." The deed, therefore, not having been duly registered, was not admissible in evidence. But Alexander Mitchell produced a subsequent deed, namely, a deed which was executed on the 31st December 1878. That deed is set out at page nine of the Record. It refers to the deed of 1873, which is set out in a schedule as part of the deed of 1878. The memorandum of registration was written, not on the first sheet of the deed of 1878, but at the end of the deed which was annexed as a schedule to, and was consequently part of the deed of 1878. The deed of 1878 not only confirmed the deed of 1873, but it went on to state that the parties to the deed did, and each of them did, "according to their and his respective estates

" and interests, grant, convey, assign, and " confirm unto the said Alexander Mitchell, his " heirs, executors, administrators, and assigns, " the piece or parcel of land "—which is the subject-matter of the dispute in this case. So that the deed of 1878 was an actual conveyance from Messrs. Nicol Fleming and Co. to Alexander Mitchell. Nicol Fleming and Co. were proved to have purchased it from Gavin Sibbald Jones, who had mortgaged it to a person of the name of Churcher. There is no doubt that the property having been the property of Nicol Fleming and Co., passed by that deed from Nicol Fleming and Co. to Alexander Mitchell. But it was alleged in the plaint that that deed was fradulent and void. The fourth paragraph of the plaint says: –" The said property belongs exclusively to " W. Mitchell, and he is in proprietary possession " thereof; the sale deed is quite fictitious, collu- " sive, and invalid, and executed without receipt " of consideration money." It is not attempted to impute any fraud to Nicol Fleming and Co. They received the consideration money of Rs. 12,406, and conveyed the estate. The fraud attempted to be made out is that the conveyance was to Alexander Mitchell instead of the son, William Mitchell. The question is, who paid the consideration money for the conveyance? Was it William Mitchell, or Alexander Mitchell? There is no evidence to show that William Mitchell had the means of purchasing the property. He had been acting merely as assistant of Nicol Fleming and Co. in conducting the mill for them before the sale, and he continued to occupy the premises afterwards.

It was proved that the consideration money for the conveyance was paid by Alexander Mitchell. It was not paid by William Mitchell in Cawnpore, but to Nicol Fleming and Co. in

England by Alexander Mitchell, who lived in Scotland.

There was no evidence whatever to show that William Mitchell was the real purchaser, or that Alexander was merely benami for him, and their Lordships think that the decision of the first Judge, that the property was Alexander Mitchell's and not William Mitchell's, was correct.

It has been urged by Mr. Woodroffe, and very properly urged, that it required some strong evidence to overturn the decision of the Judge of the execution Court, who, upon hearing the evidence, came to the conclusion that the property was Alexander Mitchell's, and he asked, Was there any sufficient evidence that it was the property of William given before the Judge of the first Court, who decided in accordance with the view of the Court of execution? There appears to be no evidence. The evidence, on the contrary, shows that the money was paid by Alexander.

The Judges of the High Court place some reliance upon the fact that the first deed was not registered in 1873. They say :—"Having esta-
" blished this lengthened possession on the part of
" their judgement debtor, the Plaintiffs reasonably
" enough contend that they have made out a
" *primâ facie* case, which it lies upon the Defen-
" dants to rebut. We think that this is the correct
" view of the position, and that it rests with
" Alexander Mitchell to prove his title. This he
" seeks to do in a fashion which is, to say the
" least of it, extraordinary. He produces two
" documents, one purporting to be a deed of con-
" veyance of the screw-house to himself, dated the
" 25th September 1873, and the other a confirma-
" tion bond executed by the same parties as the
" conveyance and dated the 31st December 1878.
" Now it is obvious that the true document

" of his title is the conveyance of 1873, but " unfortunately for him it is unregistered, and " therefore inadmissible in evidence." That document was not proved. It could not be proved because it could not be given in evidence. But the fact that the deed itself could not be given in evidence was no reason why the deed of 1878 should not be given in evidence, and that deed, referring to the deed of 1873, was proved to have been executed and their Lordships consider that it was duly registered. " Now it is obvious "—the Judges say—" that the true document of his title " is the conveyance of 1873; but unfortunately for " him it is unregistered, and therefore inadmissible " in evidence. So the expedient of the confirm- " ation bond had to be resorted to, and in March " 1879 it was presented to the collector for " registration. Now even supposing registration " had been formally and properly completed, " we should have been very strongly disposed " to hold that such an obvious attempt to defeat " the provisions of the registration law should " not be permitted to succeed. Indeed, to allow " a transaction of such a kind to pass as legiti- " mate would be to throw the door open to the " very mischief at which this branch of legis- " lation is aimed." Their Lordships do not understand what is the mischief to which the Judges allude. The Registration Act was not passed to avoid the mischief of allowing a man to be in possession of real property without having a registered deed, but as a check against the production of forged documents, and in order that subsequent purchasers, or persons to whom subsequent conveyances of property were made, should not be affected by previous conveyances, unless those previous conveyances were registered. The Registration Act, as regards real property, was not intended to be a clause similar to that which is in the Bankrupt and Insolvent Acts, by which

persons who are allowed to be, in the order and disposition of goods, with the consent of the real owners, are, as against creditors, to be considered the real owners.

Their Lordships therefore think that the second deed of conveyance, being registered, was a valid conveyance of the property from Messrs. Nicol Fleming and Co. to Alexander Mitchell, and that it passed that property to Alexander, unless there was fraud either between those who conveyed the property to Alexander, or between Alexander and his son, in taking the conveyance to Alexander as the person who had really purchased the property, instead of to the son, who was in possession of the property, and who it is said paid the purchase money. Their Lordships see no evidence at all to show that there was any fraud of that kind, or between Alexander and his son, in having the confirmation deed of 1878 executed to the father.

With reference to the persons who paid the money, it was stated by the brother of William that the father had advanced the money for the purpose of promoting the interests of his son. There was some evidence given of rent having been paid by William Mitchell to his father for this property. It certainly was not very clearly proved that the rent was regularly paid. It was said there were letters showing that the different payments had been made, but those letters were not produced. There certainly was one letter produced in which Messrs. Nicol Fleming and Co. admitted to have received a sum of Rs. 2,000 from William, in order to make a remittance to the father of £150. But the Judges put it in this way:—"Not a single entry under "the head of 'rent' in the account books of the "firm of Mitchell and Co. is forthcoming, nor "is a letter or receipt produced from Alexander "Mitchell acknowledging any one of the pay-"ments which are alleged to have been made on

" account of rent. That moneys may have from " time to time been remitted from Mitchell to " his father, by way of interest on the advances " made to start him in business, is likely enough ; " but be this as it may there is not a particle of " satisfactory proof to show that rent was ever " paid by William Mitchell to his father in " respect to the screw-house." Whether the rent was ever paid by William Mitchell to his father is not the question. The question is, who paid the consideration money for the conveyance from Messrs. Nicol Fleming and Co. to Alexander? Their Lordships think that the evidence clearly shows that the consideration was paid by the father, and that he took the conveyance to himself. There was no evidence to show that the father lent the money to his son, and that the son was the real purchaser. Even if the father lent the money to the son it is natural that he should take the conveyance to himself as a security for the repayment of the loan.

Under these circumstances their Lordships are of opinion that the *primâ facie* case which was made out by showing that William Mitchell was in possession, has been rebutted by the evidence showing that the father paid the consideration money for the conveyance to himself, and that the property was conveyed to him. Their Lordships therefore think that the decision of the Judge of the execution Court that the property was the property of Alexander and not the property of William, was correct, and that this suit must fail in asking to have that Judgement reversed. The Court of first instance, in the suit which is now under consideration, concurred with the decision of the Judge of execution.

Their Lordships think the decision of the first Judge was correct, and that the High Court were in error in reversing that decision.

Under these circumstances their Lordships will humbly advise Her Majesty to reverse the decision of the High Court, and to order that the suit be dismissed with the costs in the High Court. The costs of this Appeal must be paid by the Respondents.