



In the present case the document in question—a mortgage bond given by certain persons to the District Judge of Yenangyaung, to secure the performance of any Order which His Majesty in Council might make on an appeal then pending in this suit—was presented for registration (as the endorsement shows) to the Sub-Registrar at Yenangyaung “by Maung U on behalf of the Additional District Judge, Yenangyaung,” and was registered by the Sub-Registrar who gave the usual certificate of registration. Maung U appears to have been a clerk of the District Court. On application being made to the District Judge for the approval of this security as sufficient, the appellant objected that it had not been duly presented for registration under the Act; but the District Judge overruled the objection and approved the security, and his decision was affirmed by the Judicial Commissioner. Hence the present appeal. It should be added that the principal appeal in the suit has since been allowed by His Majesty in Council, so that the bond, if valid, has become operative; and that the appellant is desirous, before seeking to enforce the bond against the obligors and the mortgaged property, to have it determined whether the bond is effective or requires re-registration under Act XV of 1917.

The respondent was not represented on the appeal, and their Lordships have accordingly not heard an argument in support of the validity of the bond; but on the facts brought to their notice they are of opinion that there was no proper presentation under the section, and accordingly that the registration was invalid. The bond was not presented by any person executing or claiming under it. For the District Judge was not present; and, although the obligors appear to have attended for the purpose of admitting execution, they did not join in the presentation. Nor was the document presented by any agent holding a power of attorney. The only question, therefore, is whether Maung U, who appears to have attended and presented the deed on behalf of the District Judge, can be said to have been a “representative” of the District Judge within the meaning of paragraph (b) of Section 32. In their Lordships’ opinion, he cannot. The word “representative” is a term of ambiguous meaning, and must be construed according to its context. In ordinary legal use, it denotes the executor or administrator, or sometimes the heir or next of kin. In a certain context it may mean an agent; but in the present case, that meaning is excluded by the circumstance that under paragraph (c) of the section, the agent is separately referred to and is required to hold a duly authenticated power of attorney. By Section 88 of the Act, it is provided that Government officers and certain public functionaries need not appear in person or by agent at a registration office in any proceeding connected with the registration of instruments executed by them in their official capacity, and that, in such cases, reference may be made to the office for information; but no similar provision is made for the case of instruments under which any such officer

or functionary may claim. Probably the omission is inadvertent ; but if so, this must be remedied (if at all) by legislation. Their Lordships' attention has not been called to any enactment which makes a clerk of a Court the representative, in any legal sense, of the Judge.

Upon the whole their Lordships are satisfied that the term "representative" in Section 32 refers to the legal personal representative or (by virtue of Section 2) the guardian or committee of the person described and does not include a clerk or agent. The result is that, in their Lordships' opinion, this appeal should be allowed, and it should be declared that the registration of the security bond was invalid, and that the security was insufficient. Upon this declaration being made, the District Judge will, no doubt, give facilities for the re-registration of the bond under Act XV of 1917. The appellant should be at liberty to add her costs of the appeal to the Judicial Commissioner on the question of the security, and her costs of this appeal, to her security.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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DELIVERED BY VISCOUNT CAVE.

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