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ture was adjudged and apportioned out among the prisoners.

The papers and proceedings having been called for, the case was heard on the 23rd of September 1863, when the Court overruled the first and second objections made to the conviction, but reserved the question as to the amount of the fine for consideration.

NEWTON, J., now delivered the decision of the Court on the point reserved, September 23rd. The Judges who had heard the argument had fully considered the point reserved, and had also consulted Sausse, C. J., Forbes, J., and Tucker, J. All were unanimous in holding that the ruling of the late Sadr Foujdári Adálat, relied on by the pleader for the convicts, could not be upheld, and that, under Sec. 4 of Reg. XXI. of 1827, each of the convicts was liable to pay a forfeit of double the value of the smuggled opium, and double the amount of the duty leviable thereon. The appeal was accordingly dismissed, and the conviction and sentence were affirmed.

Conviction and sentence affirmed.

Sept. 15.

Special Appeal No. 105 *of* 1863.

RAGHIA', an infant, by his guardian and mother, THAKI, widow of RA'VNIA' .....*Appellant.*

DHARMA' JHATU .....*Respondent.*

Bond—Post-stamped Bond—Representatives of Grantor of Bond—Third Parties—Reg. XVIII. of 1827, *Secs.* 13 *and* 14.

A bond or other writing stamped after the death of the grantor is valid against his heirs. The personal representatives or other persons claiming as heirs or kindred of a deceased grantor stand, as regards Secs. 13 and 14 of Reg. XVIII. of 1827 (*a*), in the same position as the deceased grantor would, and are not third parties within the meaning of Sec. 14.

The previous decisions of the late Sadr Court to the contrary overruled.

THE respondent, Dharmá, plaintiff below, sued to recover possession of a strip of land situated at a place called Aori, in the Thánà District, claiming under a sale to him

(*a*) Sec. 13:—"*First*—A person possessing a bond or other writing requiring to be written upon a stamp, but which is written either on paper or other material not stamped, or on a stamp of a value below what is required, may procure such bond or writing to be duly stamped, by presenting it to any collector of land revenue with the price of the proper stamp, and a penalty to Government equal to twenty times such price."

Sec. 14:—"*First*—A bond or other writing stamped after its original date, if executed within the Zillahs subordinate to the Presidency of Bombay, shall, so far as it is affected by the stamp, become valid against the grantor from its original date; but, as to the rights of third parties the date of its being stamped shall be held to be its real date."

by Rávniá, the father of the minor appellant, defendant below. Plaintiff alleged he had afterwards leased it to Rávniá; but since his death his representatives had not taken proper care of the land, and refused to pay rent. The case set up by Thaki, as guardian of the minor defendant, Raghiá, was that her husband, Raghiá's father, had never parted with the land, as alleged, and never held it as plaintiff's tenant; that the deed of sale on which the claim was based was a forgery; that even if genuine this document was invalid, it having originally been executed on unstamped paper, and not being stamped until after the grantor Rávniá's death, and, therefore, could not be enforced against his heirs.

The Munsif of U'ran, A'zam Amrit Shrípat, held that as the deed on which plaintiff sued had not been stamped until after the grantor Rávniá's death, it was invalid against his heir, the minor defendant; that, irrespective of this, plaintiff had failed to prove any title, or that he had ever leased the land in dispute to deceased Rávniá, as alleged. He accordingly threw out the claim with costs.

Plaintiff Dharmá appealed, and the Judge of Thánà, H. P. St. G. Tucker, on hearing the appeal, delivered the following judgment:—

"The point for decision is—Has Dharmá made out his title to the piece of land which he sues to recover?

"The Munsif has rejected Dharmá's claim mainly on the strength of a decree of the Ṣadr Adálat, No. 3001, published at p. 133 of Part III. of Morris's Selected Decisions for 1853, in which it was ruled that 'a bond stamped after the grantor's death was not valid against his heir.' This construction of Reg. XVIII., Sec. XIV., cl. 1, has been affirmed by the Presidency Court in several other cases (viz., Nos. 3081, 3048, 2784, and 2837, special appeals, &c.) but not without protest; and in a late case (*b*) Mr. Hebbert, who is now senior Puisne Judge of the Ṣadr, formally dissented from the construction put on the statute by his predecessors on the bench, but considered it inadvisable to overrule the decision, which he held to be faulty, as a new Stamp Act was under the consideration of the Legislature. It is manifest, therefore, that the soundness of the precedent which has been followed by the Munsif has been questioned in the superior court, and the

(*b*) Appeal No. 70, certified list—*Sungapa bin Buslingapa* v. *Mahadoo Narayen*, 7 Harrington's Rep. 100.

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construction put on the statute seems to this Court so plainly erroneous, inasmuch as it treats the representatives of grantors as third parties, and to be calculated to produce so many evil consequences which the new Stamp Laws are powerless to avert, that the Court cannot consider that it is bound to follow this ruling, in opposition to the clear and obvious meaning of the law. It, therefore, holds that the appellant, Dharmá, has made out his title to the land specified in the deed of sale No. 4, which corresponds in quantity with the entry in the Revenue Receipts Book for 1851-52, which shows the size of the holding transferred by Rávniá to Dharmá in that year; but inasmuch as it is not clear whether the piece now sought to be recovered is included in that holding, and it is necessary for the elucidation of this fact that a Commissioner should be appointed to hold a local investigation, the Court directs that a Commissioner be appointed, and will postpone its decision till it receives his report. The Munsif's Court has been removed from U'ran to Roha, and, as both parties would be inconvenienced if the trial of the question of the fact which remains to be determined was delegated to the Roha Court, the Court reserves the trial of the issue to itself."

On the Commissioner appointed by the District Judge to make the local investigation referred to making his report, the District Judge passed the following final order in the case :—

"The Commissioner appointed by the Court having reported that the piece of land now sued for is included in the holding conveyed by Rávniá to Dharmá, and having set forth the boundaries of the said piece, the Munsif's decree is reversed, and a decree passed directing the delivery of the piece of land thus described to Dharmá. All costs on respondent."

Against this decision a special appeal was preferred to the High Court, on the ground that the Judge had misconstrued Sec. 14 of Reg. XVIII. of 1827, in holding that a bond stamped after the death of the grantor was valid against his heirs; and that the Judge's decision was opposed to the late Sadr Court's rulings in Special Appeals Nos. 3001, 3081, 3048, 2784, 2837, and No. 70 of the certified list.

Dhirajlál Mathuradás for the appellant.

Ganesh Hari for the respondent.

PER CURIAM (FORBES, ERSKINE, NEWTON, and WESTROPP, JJ.) :—The point at issue in this case is, whether the deed of sale executed by Rávniá is invalid as affecting the rights of Raghiá, his son, a minor, represented by his mother and guardian, Thaki, by reason of its not having been stamped in the lifetime of Rávniá. It has been held in the late Ṣadr Court that the son of the grantor is a third party in the sense of Reg. XVIII. of 1827, Sec. XIV., cl. 1. The Judge of the Zillá Court has departed from this and other similar precedents, and this leads us to observe that when there has been a uniform series of decisions by the higher appeal court extending over a number of years, great injury to litigants will arise if the courts in the Mofussil do not hold themselves bound by these decisions, although it is of course competent to any Mofussil Judge who may dissent from the established ruling, to record, when he deems it necessary, the reasons which lead him to dissent, but leaving it to the higher appellate court to reconsider its former rulings. We are of opinion that our decision cannot be founded on the precedents above quoted and other similar precedents, as it appears to us that the personal representatives or other persons claiming as kindred of one deceased occupy, for the purposes of the Regulation, the same position which the deceased would have occupied had he been alive. According to English Law the executors or administrators of a deceased person are implied in himself (Lord Macclesfield in *Hyde* v. *Skinner*, 2 Peere Williams' Rep. 196), and we consider, so far at least as regards the enactment in question, that the same rule applies to personal representatives of a deceased Hindú or Muhammadan.

We, therefore, confirm the decree of the lower court with costs.

Decree affirmed.