

**KUMABA HENEYA v. KIRI BANDA.**1905.  
February 7.*C. R., Kegalla, 6,502.*

*Registration of deeds—Ordinance No. 14 of 1891, s. 16—Priority in actual registration—Priority in delivery at the office for registration—Office rules as to acceptance of deeds in Registrar's office—Test of prior registration—Ordinance No. 14 of 1891, s. 17.*

Where a vendor professed to sell at different dates the same land to two distinct vendees, and the first vendee delivered the deed of sale earlier than the second to the head clerk at the office of the Registrar of Lands for registration in compliance with the terms of section 16 of Ordinance No. 14 of 1891, and where, owing to an office rule, which precluded the day-book clerk from accepting "any deeds from any member of the department," the registration of the first vendee's title was delayed, and the second vendee's deed was first actually registered,—

*Held*, in an action brought by the first vendee against the second for ejectment, that, inasmuch as the first vendee was the first to deliver his deeds at the office for registration, and both deeds have been registered on the same day the first vendee was not to be prejudiced by an office rule which precluded his deed from being actually first registered, and was not to have his deed declared void as against the second vendee on that account.

**I**N this case the plaintiff sued the defendant in ejectment on the strength of a deed of sale bearing No. 5,394, dated 4th April, 1904, granted by one Baba Appu, and claimed the benefit of its registration dated 3rd May, 1904. The defendant, on the other hand, rested his right to the property on a deed bearing No. 40,455 and dated 2nd May, 1904, and alleged he had bought the land for valuable consideration, and that his deed had been registered prior to the plaintiff's deed, upon which priority he claimed the land in terms of section 17 of Ordinance No. 14 of 1891.

On the case coming on for trial the following issue *inter alia* was framed:—"Which deed should prevail in regard to priority: No. 5,394, dated 4th April, 1904, and registered on 3rd May, 1904, or deed No. 40,455, dated 2nd May, 1904, and registered on 3rd May, 1904?"

The learned Commissioner, Mr. Allan Beven, found for the plaintiff, because in his opinion there had been on the part of the defendant both fraud in obtaining the deed and collusion in securing prior registration.

The defendant appealed.

The case came up for argument on 20th January, 1905.

*Dornhorst, K.C.*, for defendant, appellants.

*H. Jayawardene*, for plaintiff, respondent.

*Cur. adv. vult.*

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There does not appear to me to be any necessity for deciding the point raised by the appellant as to whether the Commissioner was right in holding that his deed was executed and registered fraudulently.

The Commissioner finds as a fact that the plaintiff's deed reached the registrar first, and he handed it to the chief clerk of the registration department before the defendant's deed was brought to the office. The chief clerk says he refused to accept the plaintiff's deed "because the rule of this department is that the day book clerk cannot accept any deeds from any member of the department."

That may be a very salutary rule as regards the members of the department. I do not see, however, how it can affect the rights of outsiders.

Both the plaintiff's and defendant's deed reached the registrar's office on the same day. The plaintiff's deed was received first by the registrar of lands. It is true that the defendant's deed owing to a departmental rule was entered first in the day book, but both deeds were entered on the same day in that book. The departmental rule cannot be treated as rendering void the plaintiff's deed, which was received at the registrar's office earlier than the defendant's deed. I cannot see my way to interfere with so much of the judgment of the learned Commissioner as gives preference to the plaintiff's deed. The Commissioner has, however, given judgment for the plaintiff for Rs. 20 damages per annum; there is no evidence as to plaintiff's having sustained any damage, and that portion of the decree which awards plaintiff damages must be set aside. Subject to the above amendment the decree of the Commissioner is left standing. The appellant having partly succeeded in appeal, each side will bear their own costs in this Court.

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