Present: Loos A.J.

1919.

GUNATILLEKE *v.* RAMASAMYPILLAI.

353—C. R. Negombo, 26,336.

"Assurance"—Does the term include a conveyance?—Ordinance No. 21 of 1871, s. 1—Deed conveying movable and immovable property—Registration of deed after fourteen days—Is conveyance of movable property valid?

Where a person conveyed to another immovable property along with movable property, and where the deed was registered after fourteen days,—

Held, that the conveyance of movable property was not invalid.

The word "assurance" in section 1 of the Ordinance No. 21 of 1871 cannot be restricted to a hypothecation; it includes a conveyance.

THE facts appear from the judgment.

Canakeratna, for appellant.—By deed No. 8,065 Ratnasinghe transferred certain immovable property and the movable property in question; this deed was duly registered. The judgment of the Commissioner is wrong. Ordinance No. 21 of 1871 provides that a

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sale of any movable property by a deed is good, although the deed is not registered within fourteen days if the sale is " effected by instrument, which also contains any mortgage or assurance. . . ."

Assurance means a transfer. It cannot be restricted to a mortgage only.

See definition of bill of sale in the principal Ordinance No. 8 of 1871; *re Ray, 65 L. J. 1 Ch. 320; re Roberts, 57 L. T. 79.*

Croos Dabrera, for respondent—Assurance means mortgage. The appellant ought not to be allowed costs.

April 9, 1919. Loos A.J.—

The defendant, as plaintiff in D. C. Negombo, No. 12,395, having obtained judgment against one S. P. Ratnasinghe, caused certain movable property to be seized under his writ. The present plaintiff claimed the property under deed No. 8,065 of October 8, 1917, executed in his favour by S. P. Ratnasinghe, and the claim having been disallowed, he has instituted this action to have the property declared as his, and as such not executable against the judgment-debtor in the District Court case referred to above.

Several issues were framed, and the learned Commissioner dealt with the first two issues in the first instance. They are as follows:—

(1) Is the deed relied on by the plaintiff invalid to transfer title to movable property by reason of non-registration within fourteen days after execution?

(2) Is the decision on that issue in the claim inquiry *res judicata* between the parties?

The plaintiff's deed No. 8,065 conveyed to him certain immovable property, together with the movable property in question, and was duly registered, and the Commissioner held that the plaintiff cannot succeed in his claim to the movables, the bill of sale of the movables not having been registered within fourteen days after its execution; and that section of the Ordinance No. 21 of 1871 (which provides that no pledge or bill of sale of any movable property shall be deemed to be invalid for want of registration within fourteen days, if such pledge or bill of sale shall be effected by any instrument which also contains any mortgage or assurance shall have been duly registered) does not apply in this case, for the plaintiff's deed is neither a mortgage nor an assurance of immovable property. He was of opinion that the word " assurance " in that section means a hypothecation, and not a transfer.

I think he is mistaken in his interpretation, for the word " assurance " has been held to mean something which operates as a transfer of property (*re Ray* [1]), and it has also been held that a document of title can properly be called an " assurance " (*re Roberts Evans v. Thomas* [2]).

[1] *65 L. J. 1 Ch. 320.*

[2] *57 L. T. 79.*

Then, too, in Ordinance No. 8 of 1871 the words " bill of sale " are defined as including " bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of movable property." So that it seems to be clear that the meaning of the word " assurance " in section 1 of Ordinance No. 21 of 1871 cannot properly be restricted to a hypothecation and nothing else.

The learned Commissioner's finding on the first issue must accordingly be set aside, and the case sent back for further trial, if necessary, on the other issues framed. The respondent's counsel desired that the costs of this appeal should be allowed to abide the final result, but I see no sufficient reason for depriving the appellant of the costs of this appeal in which he has succeeded. The respondent will accordingly pay the appellant's costs of this appeal.

Set aside.