

of the party interested, the particulars of any assignment, and provides that every assignment registered shall be valid against any assignment previously executed which is subsequently registered or is unregistered, and that every assignment when registered shall be unconditional in its terms. The original Act, 43 Vict. ch. 28, sec. 43, provides, amongst other things, that any assignment to be registered must be unconditional in its terms.

This law of registration seems to apply to an assignment made as well by the original purchaser or lessee of Indian lands or his heirs or legal representatives, as by any subsequent assignee or the heirs or legal representatives of such assignee. The section of the Act respecting registration would, according to its terms, seem to be absolutely decisive as to priority. There does not seem to be any provision (as in our Registry Act) as to "actual notice" had by the subsequent assignee who first registers his assignment, but I think the law so clearly laid down by Lord Cairns in the case *Agra Bank v. Barry*, L. R. 7 H. L. 147, 148, must apply, and that, although the plaintiff's assignment was registered as aforesaid, yet, if he had at the time actual notice of the assignment to Jamieson Johnston, he cannot have the priority he seeks. Such actual notice has not, I think, been proved. There are other cases to the same effect as the *Agra Bank* case.

A question may arise as to whether the law of registration has any application. This rests upon the contention that the interest purchased by Jamieson Johnston from Freckleton was a chattel interest, and not an interest in land. The cases in our own Courts relating to this subject are somewhat numerous and not all in accord. I have perused a large number of these cases, among them being *Johnston v. Shortreed*, 12 O. R. 663; *Corbett v. Harper*, 5 O. R. 93; *Summers v. Cook*, 18 Gr. 179; *McNeill v. Haines*, 17 O. R. 479; *Steinhoff v. McRae*, 13 O. R. 546; *Handy v. Carruthers*, 25 O. R. 279; *Ford v. Hodgson*, 3 O. L. R. 526; and I cannot avoid being of the opinion that the interest assigned by Freckleton to Jamieson Johnston was an interest in land, and not a mere chattel interest. To this opinion I think I am bound by the cases *Summers v. Cook* and *Ford v. Hodgson* above. It would appear, as I think, if there were no further or other controlling elements in the case, that the priority is in favour of the plaintiff. See the cases *McLean v. Burton*, 24 Gr. 134, and *Ferguson v. Hill*, 11 U. C. R. 53.

I am, however, after the best consideration I have been able to give the subject, of opinion that the assignment from Freckleton to Jamieson Johnston was a conditional