IN THE COURT OF APPEAL

AT MENGO CORAM:

WAMBUZI CJ, LUBOGO AG. J.A. AND ODOKI J.A.) CIVIL APPEAL

NO.12 OF 1985 BETWEEN

DAVID SEJJAAKA NALIMA:::APPELLANT AND

REBECCA MUSOKE:::::.::RESPONDENT Appeal from the Judgment and order of the High Court of Uganda at Kampala (Ouma Ag. J) dated 26th September 1984.

in

Civil Suit No. 486 of 1983)

JUDGMENT OF ODOKI J.A.

The appellant is the registered proprietor of the property comprised in Leaseholder Register Volume 625 Folio 2 Plot 156-158 Mutesa 11 Road, Nakawa in Kampala. The respondent is the widow of the laterofatimer1-1usoke who, prior to hi death, was the registered owner of the property. The respondent brought an action in the High Court against the appellant for a declaration' that the registration of the appellant was null and void on account of having been obtained from persons who did not have lawful authority to effect the transfer, or through fraud. She prayed for an order directing the Registrar of Titles to cancel the appellant's entry as the registered proprietor, and to reinstate the name of Prof. Latimer Musoke as the registered proprietor of the said property. The appellant pleaded that he was a bona fide purchaser for value without notice. The trial judge gave judgment for the respondent, and it is against that decision that the appellant now appeals to this court.

The facts as found by the learned trial judge are as follows. The respondent is the widow of Prof. Latimer Kamya Musoke, who died on 3rd October, 1979. The deceased left a will in which the respondent and Mr. John Kazoora Advocate were named executrix and executor, respectively. The deceased's children were named in the will. The respondent and Mr. Kazoora applied to the High Court for the grant of probate of the will. Notice of the application was duly advertised in the Uganda Times newspaper of 3rd October, 1980. The High Court (Oder J.) granted the application on 29th April 1981. The

respondent found it prudent not to administer
the estate because Mr. Kazoora and the elder children were out of Uganda.

After the grant of probate, one Dick Sengomwami Semanda, who was neither named in the will nor known to the respondent, applied, as a son of late Prof. Musoke, to the Chief Magistrates Court of Mengo for letters of administration of the estate of the late Prof. Musoke. The Court granted the letters of administration to him on 7th August 1981. On 5th January, 1982, he was registered as the proprietor of the suit property.
On 30th March, 1982, he transferred the property to one Lameck Nteyafa Sendaula in consideration of Shs. 555,500/= and he was registered as the proprietor of the property on 29th April, 1982. Lameck Nteyafa Sendaula in turn transferred the property to the appellant in consideration of Shs. 1,500,000/=, and he was registered as proprietor of the property on 29th December, 1982.

The respondent came to know that Lameck Sendaula was claiming ownership of the Suit property when she received from her tenants, Uganda Blanket Manufacturers (1973) Ltd, a copy of the letter dated 23rd May 1982 (Ext. P.VI) addressed to “the Illegal Occupant” by M/S Musoke and Co. Advocates, acting on behalf of Lameck Sendaula. In that letter, it was stated that Lameck Sendaula was the registered proprietor of the suit property, and that the “Illegal Occupant”, had occupied the house without the consent of the owner in 1979 soon after the liberation war and that he was therefore given notice of seven days to quit. The respondent also received a copy of the letter dated 5th July 1982 (Exb. P. VII) addressed to M/S Musoke & o. Advocates by the Uganda Blanket Manufacturers (1973) Ltd, in reply to their letter, in which they stated that they bad never forced their way into the house but had been in lawful occupation of the house since January, 1976.

The respondent then contacted her advocates, M/S Mulira &Co. Advocates) who wrote a letter dated 26th July, 1982 (Exh. P. VIII) to M/S Musoke & Co. Advocates informing them that the property in question was registered in the names of the late Prof. Latimer Musoke and that probate of the estate was granted by the High Court to the respondent, and further that the house had been leased and occupied by M/S Uganda Blanket Manufacturers (1973) Ltd since 1976. There was no reply to that letter. The respondent went to Ntinda Housing Estate Office to find out whether the house was still in the name of the late Prof. Musoke and

it was still so. She therefore thought that the letter dated 23rd May 1982 addressed to the Illegal Occupant was baseless.

However, after a few months, the respondent's advocates, M/S Mulira & Co. Advocates, received a letter dated 30th December, 1982 addressed to the tenant of house by M/s Kyambadde Mayambala & Co Advocates, acting on behalf of the appellant, claiming ownership of the house and stating that the tenant's lease had expired at the end of October 1982. M/S Mulira & Co. Advocates responded by writing a letter dated 26th January, 1983 (Ext. P. IX) in which they informed the then appellant's advocates that the property registered in the name of the late Prof. Musoke and that the property had never been sold to the appellant, and that M/s Uganda Blanket Manufacturers had been occupying the property a tenants since 1976 and that their lease as still in force.

The respondent and her advocates then decided to investigate the title of the property at the Land Office. It was discovered that the title had been deposited in the National Grindlays sank (Uganda) Ltd, as a security for an overdraft, and that the title had been transferred to the appellant. The respondent1s advocates wrote to the appellant a letter dated 28th March 1983 informing him of the respondent's claim to the property, but the appellant did not respond. Whereupon the respondent filed this suit. In his written statement of defence, the appellant pleaded that ha had no knowledge or notice of an fraud and that he was at all times a bona fide purchaser for value whose title was good and protected by law.

At the trial the agreed issues were:

(a) Whether the letters of administration intended to one Dick Sengowami Semanda on 7th August 1981 were capable in law to confer title to land in issue or question.

(b) whether third parties could derive title at law from a transaction arising out of such letters of administration.

(c) Whether the defendant was a bonafide purchaser for value of the land in question.

On the first issue the learned trial judge found that Dick Semanda acted fraudulently in applying for letters of administration when he was not named in the will and after the respondent had been granted, probate of the will. He held that the Mengo Magistrates Court had no jurisdiction to grant the letters of administration to Semanda for two reasons**.** The first was that respondent had not renounced her executorship, as provided under Section 193 of the Succession Act. The second was that the court had no jurisdiction since the value of the subject matter in issue exceeded the pecuniary jurisdiction of a Chief Magistrate as provided under Section 1 (i) of the Administration of Estates (Small Estates) (Special Provisions) Decree 1972. Therefore, held the trial judge, the grant of letters of administration was incompetent and of no legal effect, and accordingly they were annulled for want of jurisdiction Under S. 233 (b) & (c) of the Succession Act and S. 1 (4) of the Administration of Estates (Snail Estates) (Special Provisions) Decree 1972.

As regards the second issue, the trial judge took the view that whether third parties could derive a good title at law from the letters of administration granted by the Mengo - Court, depended largely on statutory interpretation to ascertain whether Section 233 of the Succession Act and S. 1 (4) of the Administration of Estates (Small Estates) (Special Provisions) Decree repealed or excluded by implication the application of S. 189 of the Registration of Titles Act. He found that S. 233 of the Succession Act and S. 1 (4) of the Decree were in conflict with S. 189 of the Registration of Titles Act.

He invoked the rule of Statutory Construction to the effect that where a later Act is inconsistent with an earlier one, the earlier Act stands repealed or modified by implication by the later Act. He then held that since the Succession Act and the Decree were later enactments having been enacted in 1965 and 1972 respectively, they had repealed by necessary

implication, the provisions of S. 189 of the Registration of Titles Act which he held to be an earlier Act enacted in 1963. He therefore finally held on this issue that the annulled letter of administration could not become a good root of title to a bona fide purchaser.

On the third issue the learned trial judge held that after the letters of administration which had originated the purported transfers of the suit property had been annulled for just cause, the appellant who had derived his title from Sendaula who had obtained registration through fraud, could not be protected while the respondent who was defrauded was deprived of the property.

The appellant preferred six grounds of appeal, but only the first five were argued. The first ground of appeal is:

> "The learned trial judge erred in law in holding that the provisions of S. 233 of the Succession Act and S. 1(4) of the Administration of Estates (Small Estates) (Special Provisions) Decree, 1972, repealed or excluded by implication the application or operation of the provisions of S. 189 and other relevant sections of the Registration of Titles Act."

Mr. Kulumba - Kiingi, for the appellant, submitted that the trial judge erred in so holding because the provisions of the Registration of Titles Act prevail over those of the Succession Act and the Administration of Estates (Small Estates) (Special Provisions) Decree. Ho argued that S. 3 of the Registration of Titles Act makes it a special Act in respect of all land transactions affecting registered land so that it prevails over all other law. Ho cited the decisions in Souza Figueiredo V. Talbot (1962) E.A. 167 and Kawalya Kaggwa V. Registrar of Titles HCCS No. 627/74 in support of his submissions. Counsel contended further that where the legislature intends to curtail the provisions of the Registration of Titles Act it expressly enacts so as it did in S. 43 of the Public Lands Act and S. 1(2) of the Expropriated Properties
Act 1982. It was his submission that there is nothing in S. 233 of the Succession Act and S. 21(2) of the Decree which excludes the operation of the Registration of Titles Act by

implication. Moreover, counsel submitted, the Registration of Titles Act was made later than the Succession Act.
Counsel Concluded, that the provisions of the Succession Act and the Decree must be read subject to the Provisions of S. 189 of the Registration of Titles Act.

In reply Mr. Mulira, for the respondent, submitted that the Registration of Titles Act is not a supreme law which courts are bound to gibe effect to irrespective of circumstances. He contended that on nay occasions courts have gone behind its provisions to g4e effect not only to legal logic but save an absurd situation. He supported his argument by reference to the cases of Adonia Mutekanga (1970) E.A. 429, Gibbs V. Messer (1891) A.C.248 and Olinda de Souza Figueiredo V. Kassamali Manji (1962) E.A. 759. He contended further that the court has to look at a particular situation and decide whether it was the kind of situation intended to be protected.

As regards the provisions of S. 3 of the Registration of Titles Act Mr. Mulira submitted that they deal only with inconsistent provisions and do not automatically supercede or abridge the provisions of any other law. It was his contention that the trial judge was free to apply the provisions of the Succession Act, and that the cases cited by counsel for appellant were irrelevant to the facts of this case.

In dealing with this issue the learned trial judge said,

> "I have considered the strenuous and lengthy arguments and counter arguments adduced at the hearing of this case by the learned counsels. I have also considered the authorities cited to me and relied on by the learned counsels in support of the arguments and counter arguments. It would not be necessary to set out the arguments and counter arguments and authorities here.
> I have however come to the conclusion that whether third parties could derive title at law from the letters of Administration granted by the Mengo Court, depends very such on the Statutory interpretation, that is to say, whether section 233 of the Succession Act and sub-section (4) of Section 1 of the Administration of Estates (Small Estates)

(Special Provisions) Decree 1972 (No. 13 of 1972) repealed or modified or excluded by implication the application or operation of the provisions of Section 189 of the Registration of Titles Act, to a case of peculiarities and or circumstances, of this instant case."

The learned trial judge then said that he would take the Acts in their chronological order, and continued,

"In 1963, the Legislature by the Registration of titles Act provided in Section 189 thereof, as follows:-

"189, Nothing in this Act shall be so interpreted as to leave subject to an action of ejectment or to an action for recovery of damages as aforesaid, or for deprivation of the estate or interest in respect to which he is registered as proprietor any purchaser bona fide for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he claims was registered as proprietor through fraud or error or had derived from or through fraud or error consists in wrong description of the boundaries or the parcels of any land or otherwise howsoever."

"In 1965 the Legislature by the Succession Act provided in Section 233 as follows:-

"233(1) The grant of probate or letters of administration may be revoked or annulled for just cause.
(2) In this section "just cause" means,

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant though such allegation was made in ignorance or inadvertently;

(d) that the grant has become useless and inoperative through circumstance; or

(e) that the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act inventory or account which is untrue in material respect."

"In 1972, the Legislature, by the Administration of estates (Small Estates) (Special Provisions) Decree 1972 (No. 13 of 1972) provided in Sub-section (4) of section 1 thereof, as follows:-

"(4) The grant of probate or letters of administration may be revoked, altered or annulled for just cause and any errors therein may be rectified by the court."

The learned trial judge then held,

"In application to the peculiarities and circumstances of this instant case it is my considered opinion that the phrase, "or for deprivation of the estate or interest in respect to which he is registered as proprietor any purchaser bona fide for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he claims was registered as proprietor through fraud or error

or has derived from or through a person registered as proprietor through fraud or error," in Section 189 of the Registration Titles Act is in conflict, or inconsistent or cannot be reconciled in application to the extent of protection of the title or indefeasible right of a bona fide purchaser for value with the phrase,
"annulled for just cause"
in Section 235 of the Succession Act and in Sub-section (4) of Section 1 of the Administration of Estates (Small Estates) (Special Provisions) Decree 1972, precisely, if the title of a bona fide purchaser for valuable consideration, derived under the peculiar circumstances of this present case, is impeachable or protected by section 189 of the Registration of Titles Act annulment for just cause, Linder the provisions afore said, would be devoid of any legislative intent whatsoever, if in spite of the annulment the plaintiff is all the same to be deprived of the house It cannot be maintained that was the intention of the legislature. Further, it can be maintained that the annulled letter of administration for just cause can yet become a good source or root of title to a bona fide purchaser with or without notice. It would seem to me inconsistent or contradictory in application of the provisions referred to above that after the letters of administration which in this case originated the purported transfers of the house in question, having been annulled for just cause, the defendant who derived title from or through Sendaula whom, as I have found was registered as proprietor of the house through fraud, is protected whereas, the plaintiffs who was defrauded is to be deprived of the house."

The trial judge finally concluded,

"It is not competent for a legislature to enact an Act or Decree binding itself never to enact a contradictory Act or Decree. That would be fettering the supremacy of the Legislature. What the legislature can do, the Legislature can undo. It seems therefore to me that the intent of the Legislature in Section 233 of the Succession Act and in sub-section (4) of the Administration of Estates (Small Estates) (special provisions) Decree was to repeal Or exclude by implication the application or operation of the provisions of Section 189 of the Registration of Titles Act to a case of this nature."

In coming to this conclusion, the learned trial judge relied on the principles of statutory construction which he stated as follows:-

> "According to the principles of Construction if the provisions of a later Act are so inconsistent with or repugnant to those of an earlier Act that the two cannot stand together, the earlier Act stands impliedly repealed by the latter Act, See Maxwell on Interpretation of Statutes, 10th Ed. at page 161 and a leading case of Kariapper V. Wijesinha (1968) A.C 716. In Goodwin V. Phillips (1908) 7 C.L.R reproduced in Statutory Interpretation in Australia by D.C. Pearce Second Edition, at P. 162) Griffith C.J. (as he then was) said:-
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> "**.....** where the provisions of a particular Act of Parliament dealing with a particular subject matter are wholly inconsistent with the provisions of an earlier Act dealing with the same subject matter, then the earlier Act is repealed by implication. It is immaterial whether both Acts are Penal Acts or both refer to civil rights. The former must be taken to be repealed by implication. Another branch of the proposition (which is relevant to this Case) is this, that if the provisions are not wholly inconsistent but may become inconsistent in their application to particular cases, then to that extent the provisions of the former Act are excepted or their operation is excluded with respect to cases falling within the provisions of the later Act."

I respectfully agree with the principles of construction as stated by the learned trial judge. But with respect, I think he misdirected himself when he held that the Succession Act was a later enactment to the Registration of Titles Act. The learned trial judge held that the Succession Act was enacted in 1965 but according to the date appearing at the beginning of the Succession Act (Cap. 139) the date of commencement is indicated as 15th February, 1906. There is nothing in the Act to show that S. 233 was amended or added to the Act in 1965 On the other hand the Registration of Titles Act (Cap. 205) was enacted in 1922 by ordinance No.22 of 1922 and appears to have commenced on 1st May 1924. But the learned trial judge surprisingly held that the Act was made in 1965. Again there is nothing in the Act to indicate that S. 189 was added to the Act in 1965. It is not clear therefore how the trial judge arrived at the finding that the Succession Act was made in 1965.

It seems plain to me that the Succession Act was made in 1906 and is therefore an earlier Act to the Registration of Titles Act which was made in 1922. The decision of the Court of Appeal in Barclays Bank V. Gulu (1959) E.A. 541 supports my view that the Registration of Titles Act was made in 1922. In that case Sir Kenneth O'Connor P. said at page 549;

> "In 1922 the registration of Titles Ordinance (Cape 102 of the 1923 Revised Edition of the Laws and now Cap. 123 of the 1951 Revised Edition) was enacted which introduced Torrens System of registration of title. This repealed the Registration of Titles Ordinance 1908 and the Equitable Mortgages Ordinance 1912 and by S. 3 provided that except so far as was expressly enacted to the contrary, no Ordinance or rule so far as inconsistent with the Ordinance should apply to land whether freehold or leasehold which was under the operation of the Ordinance."

It follows, therefore, that the Succession Act being an earlier Act could not amend or repeal by implication the Registration of Titles Act which is a later Act. Moreover, the two Acts do not deal with the same subject matter. The Succession Act is a general Act dealing with the law of Succession to both movable and immovable property, whereas the Registration of Titles Act is a Special Act dealing with registered land. Since the Registration of Titles Act is both a later and special Act its provisions which are inconsistent with those of the Succession Act, which is earlier and general, must prevail over those of the latter Act.

In my view, Section 3 of the Registration of Titles Act makes this point clear when it provides,

> "Except so far as is expressly enacted to the contrary, no Act or rule so far as inconsistent with this Act shall apply or be deemed to apply to land whether freehold or leasehold which is under the operation of this Act. This Act shall not be construed as limiting or abridging the provisions of any law for the time being in force in Uganda relating especially to the property of married women"

I therefore think that Mr. Kiingi is correct in saying that this section makes the Act a special enactment whose provisions prevail over the provisions of another inconsistent law dealing with registered land. In Souza Figueiredo & Co Ltd V. Moorings Hotel Ltd (1960) E.A. 926, it was held that no equity could co-exist with the provisions of Sections 3 and 51 of the Registration of Titles Act if it was
inconsistent with these Sections. Sir Kenneth O'Connor P. said at page 939,

> "Of course an equity can co-exist with the provisions of 5.3 and S.51 of the Ordinance so long as the equity is not inconsistent with these Sections."

The relationship between the Succession Act and the Registration of Titles Act has been considered in the cases of Kawalya Kagwa V. Registrar of Titles HCCS No. 627/74 (unreported) and Figueiredo V. Talbot (1962) E.A. 167. In Kawalya Kagwa V. registrar of Titles, Wambuzi C.J. said,

> "As to the last question as to whether the Registrar of Titles can register any transfers executed by the applicant as executrix, the answer must be in the negative. I accept the very plausible arguments of Mr. Katera, counsel for the applicant, to the effect that provisions of the Succession Act already referred to confer power upon an executor or administrator to dispose of all property of the deceased person. However, the Succession Act vas enacted on 5th February, 1906 and the Land Transfer and Registration of Titles Acts on 15th November 1944 and 1st May 1924 respectively. The two latter Acts were later in time and special acts dealing with special subjects whereas the former Act is general. Such provisions in the later Acts as are inconsistent with the provisions in the earlier Act must curtail those provisions to the extent of the inconsistency. In other words, whereas a non-African executor may be able to dispose of personal and real property of the deceased person under the Act, his ability so as to deal with real property is curtailed by the Land Transfer and the Registration of Titles Act (See Cases on Statute Law 7th Edition page 374)".

In Firu1redo V. Talbot (supra) the Court of Appeal hold that the general provisions of Section 214 of the Succession Ordinance must be read subject to the specific provisions of S. 143 of

the Registration of Titles Ordinance which was also a later enactment. Sir Alastair Forbes V-P who wrote the leading judgment with which the other members of the court concurred, said, at page 171,

> "Where more persons than one are registered as proprietors, "the registered proprietor" must mean all such persons; and the definition of proprietor in S.2 of the Ordinance supports this view. The Section does not indicate that one of several registered proprietors may make a deposit of certificate of title. Here "registered proprietor" of the party is Mrs. Talbot and Mr. G.B.Talbot. There is no evidence whatever that Mr. G.B. Talbot joined with Mrs. Talbot in depositing the duplicate certificate of title with the appellant with intent to create a security thereon. In my opinion, unless both executors joined in such deposit, the deposit would be ineffective to create an equitable mortgage. Reference was made to S. 27 of the Succession Ordinance (Cap. 34) which reads (omitting the illustrations);
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> > '274.When there are several executors or administrators, the powers of all may in the absence of any direction to the contrary be exercised by any one of them who has prove will or taken out administrations"
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> That general provision must however, be read subject to the <u>specific provisions of the Ordinance which is also a later</u> enactment. Section 143 ordinance provides, inter alia:
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> > "If in any case probate or administration is granted to more persons than one all of them for the time being shall join and concur in every instrumental surrender or discharge relating to the land, lease or mortgage."
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> While this does not specifically refer to the creation of an equitable mortgage by deposit of title deeds, it is the obvious intention of the legislature that in relation to registered land all executors must concur in transaction affecting the land. In these circumstances I think the term "registered proprietor" in S. 138 of the Ordinance is to

e construed as I have indicated which is the ordinary meaning of the words, and is not to be read subject to S.274 of the Succession Ordinance."

Since the provisions of the Registration of Titles Act prevail over the provisions of the Succession Act in the event of any inconsistency, the provisions of S. 233 of the Succession Act must be read subject to the provisions of S. 189 of the Registration of Titles Act.

As regards the Administration of Estates (Small Estates) (special Provisions) Decree, it is true that it was made in 1972, and is therefore a later enactment to the Registration of Titles Act. However, like the Succession Act, the Decree is of general application to administration of small estates, consisting of both moveable and immoveable property whether registered or unregistered. The Registration of Titles Act, as pointed out earlier, is special enactment dealing with specific and different subject matter. Section 1(4) of the Decree gives the court a general power to revoke, alter or annul a grant of probate or letters of administration for just cause. Section 189 of the Act on the other hand is a specific provision granting protection to a bona fide purchase for value without notice who is a registered proprietor. The two provisions do not appear to be dealing with the same subject matter nor do they appear to conflict in their application. In my opinion, for the reasons already given, the provisions of S. 1(4) of the Decree must also be read subject to the provision of S. 189 of the Registration of Titles Act.

Consequently I am of the view that the trial judge erred in holding that the provisions of S. 233 of the Succession Act and S. 1(4) of the Administration of Estates (Small Estates) (Special Provisions) Decree 1972 repealed or excluded by implication the application or operation of the provisions Of S. 189 of the Registration of Titles Act.

The next three grounds of appeal were argued together by counsel for the appellant, but I shall consider the second and third grounds first. These are stated as follows:

"2. The learned trial Judge erred in law when he resorted to Statutory interpretation of the provisions of the succession Act and the Administration of Estates (Small Estates) (Special Provisions) Decree 1972 in deciding the issue whether the appellant upon Registration acquired an indefeasible title.

3. The learned trial Judge misdirected himself on vital point of law when in his Judgment he erroneously attempted to deal with the issue: Whether the letters of Administration granted by the Mengo Court which the trial judge had annulled for "just cause" could yet become a good source or root of a good title to a bona fide purchaser with or without notice, instead of answering the question whether a bona fide purchaser for value from a registered proprietor like the Appellant who Entered his deed of transfer on the Register and become the registered proprietor by virtue of the said instrument of transfer acquired an indefeasible right or title to the suit property, notwithstanding, the infirmity of his author's title."

Mr. Kiingi for the appellant submitted that the learned trial judge ought to have looked at the Registration of Titles Act only in deciding the case. He submitted further that the first issue was wrongly framed. The issue, he argued was not whether the letters of administration were capable of passing a good title but whether appellant could obtain a good title from a person who purportedly transferred land to him, that is, whether the appellant having been registered as proprietor was protected by law. Counsel contended that the deceased's interest in the property did not pass when Dick Semanda obtained letters of administration, but when he was registered contended further that Semanda having subsequently transferred the property to Sendaula, the latter Obtained a good title so long as he did not know of the former's fraud. Mr. Kiingi then submitted, that even if the magistrate lacked jurisdiction or that Semanda obtained registration by fraud, the annulment of the letters of administration could not affect the titles of bona fide purchasers. It was his submission that there is nothing in Section 233 of the succession Act to show that once the letters of administration are annulled the subsequent purchaser loses his title.

Mr. Mulira, for the respondent, conceded that the learned trial judge's statutory interpretation was baffling and could not be of much use. He also conceded that the issue was whether the appellant was protected as a bona fide purchaser. He pointed out that S. 189 of the Registration of Titles Act protects only bona fide purchasers registered without fraud or error, and does not protect every registered proprietor. He submitted that if the registration is visited with some infirmity, the purchaser is not protected. Learned counsel also contended that nothing legal could flow from illegal proceedings. He cited the case of Mawji V. Arusha

General Stores (1970) E.A. 137. in support of this proposition.

The first two issues agreed upon by the parties at the trial required the trial judge to decide whether the letters of administration granted to Semanda were capable in law of conferring title to the suit property, and secondly whether third parties could derive good title at law from a transaction arising out of such letters of administration. It seems to me rather strange that the appellant now complains that the trial judge erred in considering the issue whether the appellant as a bona fide purchaser for value had obtained an indefeasible title. That latter issue was the third agreed issue framed at the trial.

Be that as it ray it seems to me that the first two issues were wrongly framed. The learned trial judge dealt with the first issue framed and then found that the second issue was inaccurately framed when he said,

> "The next issue I have to consider is whether third parties could derive good title at law from such letters of administration. I would observe that is an administrator to whom letters of administration are granted who derives title from the letters of administration and not third parties. If that be the legal position, then the issue is improperly or inaccurately framed. However whether third parties could derive good title at law from the letters of administration depends on the facts and or circumstances of each particular claim."

However, the trial judge does not seem to have reframed the issue. With respect I think the first to issues could have been combined into one namely whether the title of Prof. Musoke to the suit property was transferred to third parties through fraud. The third issue which was whether the appellant was a bona fide purchaser for Value without notice of the fraud was well framed and could then have become the second issue.

In deciding the issues before him the learned trial judge had to consider the evidence relating to the manner in which the name of Prof. Musoke had been removed from the register. This

evidence included the circumstances under which the letters of administration had been obtained by Semanda, how he registered himself on the register, how he transferred the title to Sendaula and how Sendaula transferred to the appellant. All this evidence was relevant to the issues before the court.

In my opinion, the question of interpretation of the various statutes in relation to each other was not strictly necessary to determine those issues. I agree with both counsel that the learned trial judge's interpretation was rather baffling for the reasons already given. What was called for was the application of the relevant provisions of the law to the issues before him. Nor do I think that it necessary to make an order annulling the letters of administration since that order was not prayed for nor essential to the decision of the case as Semanda not a party to this suit. An order directing the Registrar of Titles to cancel the appellants name from the resister and reinstate the name of prof. Musoke was all that was required. I agree with the Submission of counsel for the appellant that annulment of letter of administration obtained by Semanda could not automatically affect the title of a subsequent bona fide purchaser who was not a party to Semanda's fraud. Therefore I do not see the relevancy of the argument of counsel for the respondent that nothing legal could flow from an illegal order.

The substantial issue which arose for consideration at the trial and in this appeal was whether the appellant was a bona fide purchaser for value without notice. In the fourth ground of appeal the appellant complains that the learned trial judge erred in law in failing to hold that the appellant's title as a bona fide purchaser for value of the suit property without notice of any fraud or of the Respondents interest enjoyed the protection afforded by the provisions of the Registration Titles Act and the relevant case law.

Mr. Kiingi submitted that since the trial judge found that Semanda and Sendaula were guilty of fraud but did not so find in case of the appellant, he ought to have decided the case in favour of the appellant. Counsel submitted further that the appellant was not guilty of fraud because he had no notice of it. He contended that the appellant had no duty to make inquiries as to how previous owners had acquired their titles, nor was mere knowledge of unregistered interest sufficient to clothe him with fraud. It was his contention that fraud means actual dishonest dealing but does not include constructive fraud. Learned counsel then submitted

that since the appellant was a bona fide purchaser without notice of any fraud he was protected by the provisions of Sections 145, 184 of the Registration of Titles Act.

In reply Mr. Mulira submitted that the issue whether the appellant was a bona fide purchaser as specifically framed, and that there was sufficient circumstantial evidence to connect the appellant with acts of fraud. Learned counsel contended that the cheque the appellant issued for payment of the suit property was a forgery as it was signed by him in the name of his infant son. He submitted further that M/S Musoke & Co. Advocates acted for the appellant in transferring the suit property and since the advocates know of the respondent's interest in the property the appellant must be presumed to have had constructive notice of the interest. Counsel also contended that the advertisement in the newspaper regarding respondent's intention to apply for probate as notice to the appellant of the respondents interest.

The allegations of fraud were raised in paragraphs 7 and 8 of the plaint as follows:

> **"7.** Alternatively the plaintiff wi1l contend that the defendant became the registered proprietor of the land in question through fraud and as such his title cannot be maintained in law.
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> PARTICULARS OF FRAUD
>
> (a) On Or around the 5th day of January, 1982 one Dick Sengowami Semanda claiming to be the Administrator of the estate of the late Professor Latimer Musoke caused Chief Registrar of Titles to enter hi name on the resister as the proprietor of the said land
>
> (b) On or around the 29th day of April, 1982 the said Dick Sengomwami Semanda purported to transfer the said land to one Lameka Nteyafa Sendaula although the said Dick Sengomwami Semanda knew or ought to have known that he had no lawful authority to effect such transfer.

(c) On or around the 29th day of December, 1982, the Defendant became the registered proprietor of the said land when he knew or ought to have known that the said transaction was fraudulent.

8. The Defendant knew or ought to have known that the plaintiff was One of the lawful executors/ executrix of the estate of the registered proprietor of the land in question in as such as he plaintiff's application for grant of probate was duly advertised in the "Uganda Times" of the 3rd day of October, 1980, pursuant to an order of this Honourable Court. A Photostat copy of the said advertisement is attached herewith and marked "B"**."**

The appellant denied these allegations in paragraphs 5 and 6 of his written statement of defence where he pleaded,

"5. As to Para 7 of the amended plaint the Defendant avers that he had no knowledge or Notice of any fraud and he avers that at all material times he was a bona fide purchaser for value and he contends that his title is good and protected by law.

6. In answer to para 8 of the amended plaint the Defendant avers that he has no knowledge of the said newspaper and that no copy thereof has been served on him as alleged in the plaint."

In his judgment the learned trial judge found that Semanda obtained letters of administration from the Mengo Court by fraud. In this connection, he said,

"It was shown in evidence and it was not contradicted by the defence that the plaintiff's intention to apply for probate and administration of the estate of the late

> Professor Latimer Musoke was made public as it was advertised in Uganda Times newspaper and it appeared in the issue of that paper dated 3rd October, 1980, (Exhibit P.11). About seven months later this court granted probate to her (Exhibit P.11). Accordingly, Dick Sengomwami Semanda must be presumed to have known and noticed that fact. In acting the manner in which be did his intention was clearly to defraud the plaintiff of the property. It was the plaintiff's evidence which was not contradicted by the defence that Dick Sengomwami Semanda, to whom the letters of administration were granted, was not a son of the late Professor Latimer Musoke, as claimed, as he was neither named nor listed in his will."

The 1earned judge found that Sendaula to whom Semanda transferred the suit property was not a bona fide purchaser for value. In his judgment, the trial judge said,

> "According; to the evidence it cannot be maintained that Sendaula obtained the house as a bona fide purchaser for Value. In Exhibit P.VI he claimed to have been the registered proprietor of the house in question in 1979. In Exhibit P. XIV, he posed as a son of one L. Sendaula and yet when he transferred the property to the defendant (exhibit P. xv) he posed as a son of one Eriabu Mpagi. One cannot pose or claim to be a son of two different fathers in transactions such as these unless one has a fraudulent intent."

On the evidence before him, I am of the opinion that the learned trial judge was justified in finding that both Semanda and Sendaula obtained title to the suit property through fraud. Indeed both of these findings were not seriously challenged in this appeal.

However, the learned trial judge appears not to have adequately dealt with the issue whether the appellant was a bona fide purchaser for value without notice of the fraud of Semanda or Sendaula. In his judgment the trial judge referred to the appellants defence when he said,

> "It is the claim of the defendant in case that he bought the house from Lameck Nteyafa Sendaula as a bona fide purchaser for valuable consideration."

After holding that the determination of this issue depended on statutory interpretation of the relevant statutes he concluded that the appellant could not be protected after the letters of administration had been annulled for just cause.

While, therefore, the learned trial judge appears to have had this issue in mind, he did not make a specific finding whether the appellant was guilty of fraud and was therefore not a bona fide purchaser for value whose title could be protected by law. He may have found it unnecessary to deal with the issue in detail since he based his decision on the reasoning that the annulled letters of administration could not become a good root of title to a bona fide purchaser for value even without notice.

This being a first appeal this court has power under rule 29(1) (a) of the Rules of the court to re-appraise the evidence and draw its own inferences of facts. It is well settled that an appeal to this court from a trial in the High Court is by way of retrial, and this court has the duty to reconsider the evidence, evaluate it itself and draw its own_con1usions while bearing in mind that it has neither seen nor heard the witnesses and making due allowance for this. See Selle V. Associated Boat Company 1968) E.A. 123 at page 126.

Before I examine the evidence which was adduced on the issue whether the appellant was a bona fide purchaser it is necessary, in my view, to consider the doctrine of bona fide purchaser under our law. This common law doctrine is provided for under S.189 of the Registration of Titles Act. The section however does not define who is a bona fide purchaser, but merely provides for his protection.

There is a dearth of Ugandan or East African authorities on this section. However, in the case of Robert Lusweswe V. G.W. Kasule &Another Civil suit No. 1010 of 1983 (unreported).

I had occasion to consider this section and Said,

"The effect of this section is that once a registered proprietor has purchased the property in good faith his title cannot be impeached on account of the fraud of the previous registered proprietor. A bona fide purchaser therefore obtains a good title even if he purchases from a proprietor who previously obtained by fraud.

However, before a purchaser can claim the protection of S. 189 of the Registration of Titles Act, he, must act in good faith. If he is guilty of fraud or sharp practice he will cease to be innocent and therefore lose the protection. An action against him under Section 184 (c) of the Act which provides in relevant parts as follows:

"184. No action of ejectment or other action for recovery of any land shall lie or be sustained against the person registered as proprietor under the provisions of this Act except in any of the following cases –

(a)

(b)

(c) the case of a person deprived of any land by fraud as against a person deriving otherwise than as a transferee bona fide for value from or through a person registered through fraud;

(d)

(e)

and in any case other than as aforesaid the production of the registered certificate of title or lease shall be held in every court to been an absolute bar and estoppel to any such action against the person named in such document as the grantee, owner, proprietor or lessee of the land there in described an law or equity to the contrary notwithstanding."

As regards the sanctity of the register, I said,

"Therefore while the cardinal rule of registration of titles under the Act is that a register is everything the court can o behind the fact of fraud on of the transferee See Olinda De Souza Figueiredo V. Kassamali Nanji (1962) E.A. 756 Harshad Ltd V.

Globe Cinema Ltd & others (1960) E.A.1046, Re Malo (1964) E.A. 731, Wainiha Saw milling CO. Ltd V. Wainone Timber Co. Ltd (1926) AC. 101, Gibbs V. Messer (1891) A.C. 248 64 T.L.Rep. 237 Assets Co. Ltd V. Mere Roihi & others. (1905) A.C.176, 92.T.L.Rep. 397."

The next question to consider is the meaning of fraud as used in the Act. It I think well settled that fraud means actual fraud or some act of dishonesty. In Wainiha Saw milling co. Ltd V. Wainone Timber Co. Ltd. (1926) A.C 101, Lord Buckmaster defined fraud, at page 106, as follows:

> "Now, fraud clearly implies some act of dishonesty. Lord Lindley in Assets Co. V. Mere Roihi (1905) A.C.176., states, "Fraud in these actions i.e. actions seeking to affect a registered title means actual fraud, dishonesty of some sort not what is called constructive fraud – an unfortunate expression and one very apt to mislead, but often used for want of a better term to denote transactions having consequences in equity similar those which flow from fraud."

Where there are a series of subsequent transfers, for the title of the incumbent registered proprietor to be impeachable, the fraud of the previous proprietors must be brought home to him. In Assets Co. Ltd V. Mere Roihi & others (supra) Lord Lindley said,

> "Further it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered proprietor for value whether he buys from a person claiming under a title certified under the Native Lands Act must be brought to the persons whose registered title is impeached or to his agents. A fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out the fraud had he been more vigilant and had made further inquiries which he omitted to make does not itself prove fraud on his part. But if it be shown that his suspicions were aroused and that he abstained from making inquiries for fear of learning the truth, the case is very different and fraud maybe properly ascribed to him."

The respondent maintains that there was adequate circumstantial evidence to saddle the appellant with fraud. It was submitted that the appellant knew of the respondent's

unregistered interest through the advertisement in the newspaper of her intention to apply for probate, and secondly, through M/S Musoke & Co. Advocates who were acting for both appellant and Sendaula. But the appellant contended that mere knowledge of unregistered interest was insufficient to clothe him with fraud. He relied on section 145 of the Registration of Titles Act which provides,

> "Except in the case fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any registered land, lease or mortgage shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice actual or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imported as fraud."

I agree that the object of this section and indeed the entire Act is to save persons dealing with registered proprietors from the trouble and expense of going behind the register in order to satisfy themselves of its validity, and thus simplify and expedite the process of transfer of title. But the section cannot be called in aid in cases of fraud. The section stipulates that mere knowledge of unregistered interest cannot of itself be imputed as fraud. Therefore, in my view, where this knowledge is supported by other circumstances it may amount to fraud.

In John Katarikawe V. William Katwiremu & Another, Civil Suit No 2 of 1973 (unreported) the High Court, while dealing with S.145 of the Act, said,

> "Although mere knowledge of unregistered interest cannot be imputed as fraud under the Act it is my view that where such knowledge is accompanied by a wrongful intention to defeat such existing interest that would amount to fraud. In the absence of a statutory definition of fraud I would adopt the definition in a similar Kenyan Statute which defines fraud as "fraud shall on the part of a person obtaining registration include a proved knowledge of the existence of an unregistered interest on the part of

some other person, whose interest he knowingly and wrongfully defeats by such registration." I take this view because I doubt whether the framers of the Act ever intended to encourage dishonest dealings in land such as manifest in this case."

This decision was approved by this court in the case of Marko Matovu & others V. Mohammed Sseviri & Another, Civil Appeal No. 7 of 1978 (unreported). The brief facts of the case were that the appellants applied for a lease on 17/10/73 and after inspection of the land by the local land Committee on 21/11/75, they were offered a lease on 27/7/76, which they accepted on 10/10/76, and paid the prescribed fees. When they went to survey the land, they found that the first respondent had already surveyed it for himself and had started fencing. The first respondent obtained title on 2.9.76. The appellants instituted the suit for cancellation of that title on the ground that it was obtained by fraud and in breach of the rules of natural justice. The trial Judge held that there was something fishy about the respondent's application but he refused to find that the irregularities amounted to fraud, and gave judgment for the respondent.

On appeal, the appellants contended, inter alia, that the learned judge erred in law and in fact in holding that fraud had not been proved. The court of Appeal found that the evidence showed that the respondent's application was deliberately back-dated to support the view that the inspection of this land was carried on 21.11.75. It also
found that there was an attempt to falsify the dates on the respondent's application and other documents were destroyed and replaced by others obtained by underhand means. Further there was evidence to show that the respondent was assisted by some agents of the Land Commission to defeat the appellants' right to title of which the respondent was fully aware. The court also observed that the Commission had entertained another application on the same land on which the appellants were the customary tenants without giving them a hearing. In allowing the appeal, the court said,

"Not only was that unfair play but also fraud. It is fraud if, as it was held in Katarikawe v. Katwiremu & Another, Civil Suit No. 2 of 1973, a person procures registration to defeat an unregistered interest on the part of another person of

which he is proved to have had knowledge."

In the present Case it was not disputed that the respondent was the widow of Late Prof. Musoke who was the registered proprietor of the suit property, and that she obtained probate in respect of this property from the High Court before the appellant became the registered proprietor of the property. The notice in the newspaper about her intention to apply for probate was notice to the whole world and therefore the appellant may be said to have had knowledge of it. On being granted probate, the respondent acquired a registrable interest in the property and could have lodged a caveat to protect her interest. However, I do not think that notice in the newspaper was sufficient by itself to give the appellant actual notice of her interest in the property at the time he purchased it, unless it was supported by other evidence.

It was contended for the respondent that M/S Musoke & Co. Advocates were acting on behalf of Sendaula and the appellant, and that since the advocates knew of the unregistered interest of the respondent and the fraud of Sendaula that knowledge must be imputed on the appellant. It is common ground that M/S Musoke & Co. Advocates were acting on behalf of Sendaula. It is also well established from the evidence that by the time, the advocates prepared the sale agreement of the suit property between Sendaula and the appellant, they were aware of the respondent's interest in the property and the alleged fraud of Sendaula. However, there is no direct evidence to show that they were acting for the appellant in this transaction. Counsel for the appellant submitted that the advocates were not acting for the appellant.

There were no other advocates except Musoke & Co. who were involved in the purchase and transfer of property from Sendaula and the appellant. Musoke & Co. Advocates prepared the Memorandum of Agreement, and witnessed both signatures of Sendaula and the appellant. The same advocates received the first instalment of the purchase money of Shs. 900,000/= from the appellant on behalf of Sendaula for clearing off the mortgage on the title. The advocates also witnessed the signatures of Sendaula and the appellant on the transfer. In his evidence the appellant did not deny or admit that the advocates were acting for him but he admitted that they witnessed the Memorandum of Agreement. On this evidence it seems to

me that the advocates
were acting for both parties to this transaction.

If the advocates were acting for the appellants as well, could notice of the respondents' unregistered interest and of the fraud of Sendaula be imputed on the appellant? It seems to me that where a purchaser employs an agent, - such as advocate to act on his behalf the notice he receives, actual or constructive, is imputed on the purchaser. And similarly where the advocate acts for both parties any notice he acquires is ordinarily imputed on both parties. There is an exception to the principle where the agent deliberately defrauds the purchaser.

In their book, The Law of Real Property 3rd Edn. at p.129, Megarry and Wade write as follows:

> "If a purchaser employs an agent such as a solicitor any actual or constructive notice which the agent receives is disputed to the purchaser. The basis of this doctrine is that a man who empowers an agent to act for him is not allowed to plead ignorance of his agent's dealing. Thus where a solicitor discovered an equitable mortgage on the title was deceived by a forged receipt into believing that the mortgage had been discharged, the purchaser had imputed notice of mortgage and was bound by it:
>
> Jared v. Clements (1903) 1 Ch. 428."

The doctrine of imputed notice seems to have been provided for in S.3 of the Conveyancing Act 1882 which was considered in the case of Bakeman & Another v. Hunt and Others (1904) 2 K.B. 550, where , Stirling L.J. said, at page 540:

> "It was however contended that Eliot had not actual but constructive notice that full amount had not been paid. This was sought to be made out as follows: It was said that when Harrison appealed to Line to execute a transfer to Elliot he must be taken to have been acting as Elliot's solicitor, and that if an independent solicitor had been employed by Elliot and had made the like application he would have discovered the truth, and consequently that Elliot was brought within the terms of the Conveyancing Act 1882, S.3 sub- S.l

> which provides that " a purchaser shall not be prejudicially affected by notice of any instrument fact or thing unless … (iii) in the same transaction with respect to which a question of notice of the purchaser arises it would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the Solicitor or other agent"

The Conveyancing Act 1882 is a statute of general application and is therefore applicable in this country by virtue of the order-in-Council 1902, and the Judicature Act 1967.

There was other evidence from which appellant's notice of fraud could be inferred. In his own evidence, the- appellant stated,

> "Sendaula's brother approached me and told me about the land and the house. I told the brother to tell Sendaula to come to my office. I asked Sendaula to go to the house. It was a Saturday we met a Mr. Ochiti. He asked if I was a lawyer. I told him I wanted to buy the land. I asked him to allow me to
> inspect the house. I inspected the house. I also asked him in what capacity he was there. He told me that he was a tenant and that their lease would expire at the end of December, 1983.
>
> The following day I went to make a search. I looked at the register. I found that the registered owner was Sendaula."

It may be that the appellant had no duty to inquire as to whose tenant Mr.Ochiti was, but the fact that he asked the tenant in what capacity he was occupying the house when the purported landlord, Sendaula, was with him was very strange. In view of the fact that Sendaula had obtained the title to the land by fraud, it is possible that Sendaula and Ochiti did not know each other. It should also be noted that the appellant did not go further to ask Ochiti who was his landlord. Instead he went to investigate the title at the Land Office. It is reasonable to infer from the appellant's conduct that his suspicions were aroused but that he feared to learn

the truth from the tenant, by inquiring from him who was his landlord. Had he done so he would have definitely found out that Ochiti's landlord had been Prof. Latimer Musoke. As Lord Lindley said in Assets Co. Ltd. V. Mere Roihi (supra) where the purchaser's suspicions are aroused but he abstains from making inquiries for fear of learning
the truth, fraud may be properly ascribed to him.

In the case of Lusweswe v. Kasule (Supra) the plaintiff was the registered proprietor of two plots of land, Plot 120 and Plot 121 (Mailo Register Kyadondo Block 249 at Gaba). He built a residential house on Plot 120 with a drive-in- passing through Plot 121, and both plots were enclosed in one compound. The first defendant forged a transfer to himself and got registered as the proprietor of Plot 121. He then transferred to the second defendant who took possession of both plots and leased the house on Plot 120, still registered in the name of the plaintiff, to an Embassy**.** The plaintiff sued the defendants for an order cancelling their certificates and reinstating his name on
the register, on grounds of fraud. The second defendant pleaded that he was a bonafide purchaser for value.
It was held that the circumstantial evidence adduced was incompatible with the second defendant being a bona fide purchase and was only consistent with fraud. The court took into account the occupation of Plot 120 by the second defendant when he had purchased only Plot 121, his apparent failure to inquire from the neighbours the ownership of the two plots and his failure to open up the boundaries of the two plots.

The last piece of evidence relied on by the respondent to prove fraud on the part of the appellant was the cheque issued by the appellant to pay the balance of the purchase price. When cross-examined on this matter the respondent stated,

> "I have forgotten my account Nos. in Grind lays Bank. One is in my names and the other is in the names of my child. I operate both accounts. I deposit as well as withdraw. David Kasoma is my child. He is 6 years old. He cannot sign a cheque. I signed the cheque. The cheque was signed by me in the names of Kasoma."

Counsel for the respondent argued that the cheque was a forgery. Although it may not be possible on the evidence to find whether the cheque was a forgery or not, I am of the view that it was extremely strange that the appellant signed in the name of his minor son, instead of signing for him or in his own right as a signatory. If his son could not sign any cheque, then the appellant must have been the signatory. This unexplained strange conduct may be seen as an attempt by the appellant to conceal the fraud.

While the burden of proving the case lies on the plaintiff, it is well settled that the onus of establishing the plea of a bona fide purchaser lies on the person who sets it up. It is a simple plea and is not sufficiently made out by proving purchase for value and leaving it to the plaintiff to prove notice if he can. In Pilcher V. Rawlins (1872) 7 Ch. App. 259, Sir, James L.J. said at P.268,

> "I propose to apply myself to the case of a purchaser for valuable consideration without notice obtaining upon the occasion of his purchase and by estate, some right, some legal advantage, and according to my view of the established law of this court. Such consideration without notice is an absolute unqualified, unanswerable to the jurisdiction of this court. Such a purchaser where he has once put in that plea may be interrogated and tested to any extent as to the valuable consideration which he has given in to show the bona fide or mala fides of his purchase, and also the presence or absence of notice; but once he has gone and has satisfied the terms of the plea of purchase for valuable consideration without notice, then according to my judgment, this court has no jurisdiction whatever to any thing more legal advantage which he has obtained whatever it may be. In such a case a purchaser is entitled to hold that which without breach of duty, he has had conveyed to him."

In a later case, Wilkes V. Spooner (1911)2 K.B. 473, the same principle was reiterated by Farwell L.J. when he said at P. 480.

> "The onus in such cases of showing absence of notice lies I think on the defendant. It was held in the court of Appeal in Attorney General V. Bishosphated Guano Co. (1879) 11 Ch. D. 327 (at p. 337 that under such circumstances it is not a case of a

> defence that the defendant is a purchaser for value, and then a reply that the defendant is a purchaser for value without notice, the onus of proving which is on the defendant."

In view of the evidence I have considered regarding the conduct of the appellant, I am unable to find that he succeeded in establishing that he was a bona fide purchaser for value without notice of the fraud of the previous registered proprietors through whom he derived title. On the contrary there was, in my view, sufficient circumstantial evidence to saddle him with fraud. That being so, the appellant cannot claim the protection of S. 189 of the Registration of Titles Act.

The last ground of appeal is that the learned trial judge erred in law in holding that the effective protection afforded to the appellant under S.189 of the Registration of Titles Act would have left the respondent without a remedy. Mr. Kiingi submitted that the respondent could sue Semanda or Sendaula for recovery of damages under S.186 of the Act. Mr. Mulira replied that the respondent was entitled to have left the respondent without a remedy. Mr. Kiingi submitted that the respondent could sue Semanda or Sendaula for recovery of damages under S. 186 of the Act. Mr. Mulira replied that the respondent was entitled to have sentimental feelings considered instead of monetary compensation as alternative remedy.

This complaint arises out of the finding by the trial judge when he said,

> "Further it cannot be maintained that the annulled letters of administration fro just cause can yet become a good source or root of title to a bona fide purchaser with or without notice. It would seem to me inconsistent or contradictory in application of the provisions referred to above, that after the letters of administration which in this case originated the purported transfers of the house in question having been annulled for just cause the defendant who derived title from or through Sendaula whom as I have found was registered as proprietor of the house through fraud, is protected, whereas the plaintiff who was defrauded is to be deprived of the house."

As I have held, the trial judge misdirected his mind on this issue, but for the reasons I have given, his error caused no failure of justice. However, there is nothing in that passage to indicate that the trial judge found that the respondent would have no remedy of compensation

which is available under S. 186 of the Act. Nor was the question of sentiments considered or relevant.
I therefore find no merit in this ground of appeal.

For these reasons, I would dismiss this appeal with costs. The trial judge made an order directing the Chief Registrar of Titles to reinstate the names of Rebecca Musoke and John Kazoora as proprietors of the suit property. With respect I think this order was erroneous because these names had never been entered on the register and therefore could not be re-instated. The proper order would have been to direct the
Chief Registrar to reinstate the name of Prof. Latimer Musoke on the register as prayed in the plaint. I would confirm the orders made by the trial judge, subject to this variation.

Dated at Mengo this 10th day of November 1986
B. J. ODOKI
JUSTICE OF APPEAL

IN THE COURT OF APPEAL

AT MENGO CORAM:

WAMBUZI CJ, LUBOGO AG. J.A. AND ODOKI J.A.) CIVIL APPEAL NO.12 OF 1985 BETWEEN

DAVID SEJJAAKA NALIMA:::APPELLANT AND

REBECCA MUSOKE:::::.:::RESPONDENT Appeal from the Judgment and order of the High Court of Uganda at Kampala (Ouma Ag. J) dated 26th September 1984.

in

Civil Suit No. 486 of 1983)

JUDGMENT

I have had the opportunity of reading in draft the judgment of Odoki J.A. I agree with him and the orders made therein.

David L.K. Lubogo

Ag. Justice of Appeal