

*Privy Council Appeal No. 56 of 1923.*

Maharu Walad Lotu - - - - - *Appellant*

*v.*

Khandu Walad Hari Patil and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

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JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY  
COUNCIL, DELIVERED THE 13TH MAY, 1924.

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*Present at the Hearing :*

LORD DUNEDIN.

LORD PHILLIMORE.

LORD CARSON.

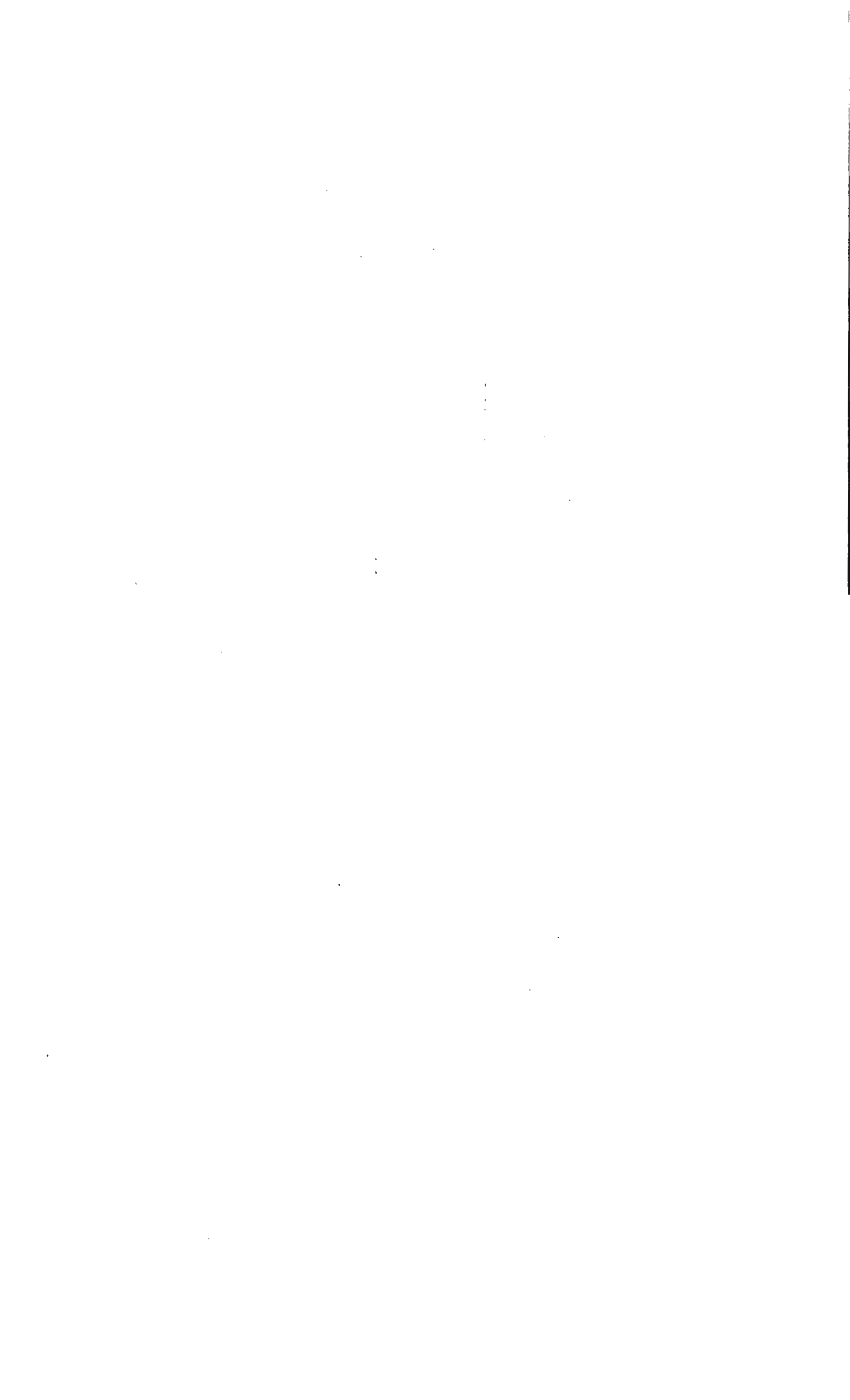
SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

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In this case the first respondent, the owner of certain separate parcels of land, entered into an agreement to sell those lands on 2nd October, 1913, to the appellant. He did not at the time follow that up by an actual sale, and on 27th October, 1913, he sold the same lands to the second respondent by two sale deeds. Following upon that he also made a conveyance on the 6th November, 1913, in virtue of the first agreement. In the attestation which has to be appended at registration the vendor in respect of the sales of the 27th October, 1913, made a statement that he had signed the documents in question not as sales, but as mortgage deeds. Priority of time is in favour of the two sales which happened upon 27th October, and they, therefore, must be got rid of, and the way in which the defendant, whose transferee had got into possession, endeavoured to get rid of them was to asseverate that when he appended his signature to the two sale deeds on 27th October he was so drunk that he did not know what he was about. He went to proof upon that allegation, and that statement has been held

to be untrue. It was also open to him to make the case that whereas he in fact signed sale deeds it had been represented by the other party that what he was really signing were mortgage deeds, in which case he would have been entitled to be relieved against this fraudulent act. At the trial as originally conducted he really gave no evidence as to any representation of that sort ; but entirely confined himself to this allegation about his state of utter drunkenness, and accordingly all the evidence that was left was that there was in fact an antecedent agreement to sell ; there was a certain conversation antecedent to the deeds of sale, in which he proposed to mortgage, and then there was what may be called a blank as to what happened at the actual transaction. Notwithstanding that, the learned Judge in the Court of first instance gave judgment in favour of there being no proper transaction of sale. The case then went on appeal to the High Court, and the High Court, feeling that the true matter had not been enquired into, sent it down again and put upon the defendant the necessity of showing that his signature to these two sale deeds had been obtained under a misrepresentation. He led no further evidence and, the case was then heard by a second Judge, who repeated the judgment. The second Judge seems to have gone upon the view that inasmuch as the vendor had said in his attestation as to his signature that he had signed mortgage deeds and not sale deeds, that showed the impression that he was under, and it must be inferred that that impression had been induced by the action of the other party. The High Court reversed. It is impossible for their Lordships to draw such an inference as was drawn by the trial Judge, and their Lordships, therefore, think that it is quite clear that the case here is not made out, and they will humbly advise His Majesty that the appeal should be dismissed with costs.



In the Privy Council.

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MAHARU WALAD LOTU

v.

KHANDU WALAD HARI PATIL AND  
ANOTHER.

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DELIVERED BY LORD DUNEDIN.

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