"*year*" or "*month*". We are therefore clearly of opinion that the order of remand ought not to have been made by the learned Judge.

The result is that this appeal is allowed the order of Mr. Justice Coxe set aside, and the decree of the Subordinate Judge restored.

We are not in a position to consider the propriety of the judgment of the Subordinate Judge, because there is no appeal by the defendant against that judgment.

There will be no order for costs of this appeal.

JENKINS C.J. concurred.

S. M. *Appeal allowed.*

LETTERS PATENT APPEAL.

Before Jenkins C.J., and Mookerjee J.

AMEER ALI

v.

YAKUB ALI KHAN.*

1913

July 11.

Rent—Oral evidence, admissibility of—Evidence Act (I of 1872), s. 92—Tenancy—Lease.

Where a *kabuliyat* was executed, but was not registered and never came into operation, oral evidence is admissible to prove the rent agreed upon by the parties.

A tenancy can be proved without proving the lease, if there be any.

Banka Behary Christian v. *Raj Chandra Pal*(1) and *De Medina* v. *Polson*(2) referred to.

LETTERS PATENT APPEAL by the defendant, Ameer Ali, from the judgment of Coxe J.

* Letters Patent Appeal No. 12 of 1912, in Appeal from Appellate Decree No. 1192 of 1909.

(1) (1909) 14 C.W.N. 141. (2) (1815) Holt N. P. 47.

1913

AMEER ALI v. YAKUB ALI KHAN.

This was a suit for rent. The plaintiff's case was that the defendant took a lease of the land in suit and agreed to pay a monthly rent of Rs. 4. The claim included arrears of rent and damages. The defendant denied the relationship of landlord and tenant as also the plaintiff's right to the land and the arrangement to pay rent at Rs. 4 a month. The Munsif, while finding title with the plaintiff, dismissed the suit on the ground that the agreement and realization of rent had not been made out. On appeal by the plaintiff, the Subordinate Judge decreed the appeal, basing his decision on the evidence of witnesses and the plaintiff's collection papers and account books. The cross-objection by the defendant was dismissed. The defendant then appealed to the High Court. Coxe J. alone heard the second appeal and it was contended, *inter alia*, before him that a *kabuliyat* which had been executed by the defendant was inadmissible in evidence, not being registered, and that oral evidence could not be given of the relationship between the parties. He overruled the contention and dismissed the appeal. The defendant thereupon appealed under clause 15 of the Letters Patent.

Babu Dheerendra Lal Kastgir, for the appellant. The lease being unregistered was incapable of being put in evidence for the purpose of establishing the relationship of landlord and tenant. Section 92 of the Evidence Act excludes oral evidence.

Babu Kshiteesh Chandra Sen, for the respondent. A tenant can prove his tenancy without proving his lease, if he has one, which is inadmissible for want of registration: *Lala Surabh Narain Lal* v. *Catherine Sophia* (1), *Fazel Sheikh* v. *Keramuddi Sheikh* (2) and *Banka Behary Christian* v. *Raj Chandra Pal*(3).

(1) (1896) 1 C. W. N. 248. (2) (1902) 6 C. W. N. 916.
(3) (1909) 14 C. W. N. 141.

1913

AMEER ALI v. YAKUB ALI KHAN.

MOOKERJEE J. This is an appeal under clause 15 of the Letters Patent against a judgment of Mr. Justice Coxe in a suit for rent.

The plaintiff sues to recover rent from the defendant. In his plaint, he states that the defendant had on the 6th of July 1898 executed a *kabuliyat* which was not registered and never came into operation. He claims rent at the rate of Rs. 4. It is urged before us that as the *kabuliyat* was not registered and consequently never came into operation under section 107 of the Transfer of Property Act, no oral evidence could be given to show that the rent was fixed at Rs. 4. This contention is clearly unfounded. Section 92 of the Evidence Act, on which reliance is placed, is of no assistance to the appellant. It has been repeatedly laid down in this Court, as is clear from the case of *Banka Behary Christian* v. *Rai Chandra Pal* (1), and the earlier decisions mentioned there, that a tenancy can be proved without proving the lease, if there be one. This is in accord with what is the settled law in England. Thus it was held in *De Medina* v. *Polson* (2), that where a rent is mentioned in the lease or agreement, such rent will be the measure of damages, though the lease be void by the Statute of Frauds. In our opinion, oral evidence was admissible to prove the rent which was agreed upon by the parties and that the suit has been rightly decreed.

The decree of Mr. Justice Coxe will, therefore, be confirmed with costs.

JENKINS C.J. concurred.

S. M. *Appeal dismissed.*

(1) (1909) 14 C. W. N. 141.

(2) (1815) Holt N. P. 47.