

proceedings on the original trial terminated on the 9th of December. The proceeding before us is an appeal, and no such proceeding was commenced before us on the 1st of January. That being so, it appears to me that the case must come under the general language of s. 408, viz., that any person convicted on a trial held by a District Magistrate may appeal to the Court of Session. That language is general; it is in no way restricted to persons convicted after the Code came into operation, and it is sufficiently wide to include the cases of persons convicted before the new Code came into force. This being so, I am of opinion that the appeal in the present case ought to have been made not to the High Court but to the Court of Session. I am, however, quite of opinion with my learned colleague that having regard to the distance of Assam from Calcutta, having regard to the mistakes that may probably be committed upon a change in the law, and moreover having regard to the facts of this particular prosecution, it is a proper case in which to exercise the revisional jurisdiction of this Court. This being so I have concurred in hearing this case as a case taken up for revision. As to the remarks on examination of the evidence, and generally on the merits of the case which have just been made by my learned colleague, I entirely agree, and I think that these appellants must be acquitted and discharged.

1883
 RONGAI
 v.
 THE
 EMPRESS.

Convictions set aside.

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Mitter.

RAMKRISTO DASS (PLAINTIFF) v. SHEIKH HARAIN (DEFENDANT).*

1882

December 22.

Suit for Rent—Landlord and Tenant—Registered owner, Suit by where the relationship of landlord and tenant is not shown to exist—Beng. Act VII of 1876, s. 78.

The mere fact of a person being registered under the provisions of Beng. Act VII of 1876 as proprietor of the land in respect of which he seeks to recover rent is not sufficient to entitle him to sue for it.

* Appeal under s. 15 of the Letters Patent against the decree of Mr. Justice O'Kinealy, dated the 13th September 1882, in Appeal from Appellate Decree No. 1549 of 1881.

1882
 RAMKRISTO
 DASS
 v.
 SHEIKH
 HARAIN.

Where a landlord who was registered as owner of the land in respect of which he claimed rent, sued the occupier for such rent, but was only able to prove the fact that he was the registered owner, and was unable to show that the relationship of landlord and tenant existed, or that he had a good title to the estate of which he was the registered owner :

Held, that the suit was rightly dismissed.

THIS was an appeal under s. 15 of the Letters Patent against the decree of Mr. Justice O'Kinealy. The plaintiff in this and some analogous suits sued for arrears of rent in respect of the years 1283 to 1285 (1876—1878) for lands situate in a certain talook No. 170, of which he was registered as owner. The defendant denied that the relation of landlord and tenant existed, and alleged that for the particular lands for which the rent was claimed he paid rent to a third party named Omakant.

The Court of first instance decreed the suit, but the Subordinate Judge on appeal, holding on the evidence on the record that the relationship of landlord and tenant did not exist, reversed that decree and dismissed the suit.

The plaintiff then preferred a special appeal to the High Court, and on the hearing of the appeal before Mr. Justice O'Kinealy it was contended that inasmuch as the plaintiff had got his name registered in respect of the land, the defendant holding the land was bound to pay him rent without any contract, express or implied, and that he could sue him for rent. Mr. Justice O'Kinealy, however, held that if the relationship of landlord and tenant did not exist, the suit could not be maintained merely from the fact that he was the registered owner. It was further contended in special appeal that the Courts below should have decided whether the land in question lay within plaintiff's lands or within the boundaries of the chak belonging to Omakant; but the Court held that it was quite unnecessary to enter into the question of the plaintiff's title as against a party not on the record, when the other finding was sufficient to dispose of the suit.

Several other questions were raised on behalf of the plaintiffs on Special Appeal, which are immaterial for the purposes of this report, and the Court after disposing of them held that on the facts, as proved, there was nothing to show that the relationship of landlord and tenant existed, and accordingly dismissed the appeal.

The plaintiff accordingly preferred the present appeal.

Baboo *Omakali Mukerjee* appeared for the appellant.

Baboo *Jogesh Chunder Rai* for the respondent.

The judgment of the Court (GARTH, C.J., and MITTER, J.) was delivered by

GARTH, C.J.—The plaintiff is the registered owner of a revenue-paying estate under Beng. Act VII of 1876, and in this and other analogous cases he sues certain tenants of that estate to recover rent for the lands which they hold; and for the purposes of the question, which we have to determine, we must assume that he has proved no title to the rent which he claims, beyond the mere fact that he is the registered proprietor. The question is, whether that fact alone entitles him to recover rent from the defendants.

The Court of first instance considered that it did; but the Subordinate Judge and the learned Judge of this Court have both decided against the plaintiff. He now appeals to us relying on the language of s. 78 of Beng. Act VII of 1876.

That section says that “no person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act.”

It is contended that under the provisions of that section the registered owner of a revenue-paying estate has a right to sue the tenants for rent, although he has not entered into any contract with them, and although he cannot prove a good title to the estate of which he is the registered owner.

We think that the section does not say or mean anything of the kind. It is true that the owner of the estate cannot sue for rent, *unless he is registered*; but it by no means follows, that one who is not the true owner, can sue because he is registered.

This point is very clear, and has been decided by this Court on several previous occasions.

Speaking for myself I heartily wish it were the law, that the registered owner, and the registered owner only, was entitled to sue

1882

BANKRISTO
DASS
v.
SHEIKH
HARAIN.

1882 the tenants for rent; and that, not only as regards revenue-pay-
 RAMKRISHN DASS ing, but all other estates.

v.
 SHEIKH
 HARAIN.

Unfortunately, however, that is not the law at present; and we must therefore dismiss this appeal with costs.

It is admitted that the appeals, numbered 1550 to 1553 inclusive, will be governed by this decision. Those appeals, therefore, are also dismissed with costs.

Appeal dismissed.

FULL BENCH REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep and Mr. Justice Wilson.

1883
 March 9.

ULFATUNNISSA *alias* ELAHIJAN BIBI (DEFENDANT) v. HOSAIN KHAN (PLAINTIFF).*

Registration Act III of 1877, s. 49—Unregistered bond—Evidence—Mortgage.

An unregistered bond, containing a personal undertaking to repay money borrowed, and also a hypothecation of land above Rs. 100 in value as security, may be used in evidence to enforce the personal obligation.

THIS was a suit for money lent and interest. The plaintiff alleged that the defendant had borrowed from the plaintiff the sum of Rs. 2,500 on the 3rd of February 1878, and that on the same date she executed a bond, whereby she promised to pay the money within a year. The bond had been lost by the plaintiff before the institution of the suit, but on the trial secondary evidence of its contents was given by one of the plaintiff's witnesses, who is thus referred to by the lower Appellate Court: "He drew up a draft of the plaint to be filed with the bond before it was lost, and was plaintiff's adviser at the time. He is therefore in the best position of all the witnesses to speak as to its contents. He says the bond contained these words: "I promise to pay the amount of the bond peaceably *शान्तिपूर्वक*—if not, you will sell the property which is mortgaged; and you may then proceed

* Full Bench Reference made by Mr. Justice Wilson and Mr. Justice Field, dated the 6th September 1882, in appeal from Appellate Decree No. 699 of 1881.