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 PRESS OF  
 INDIA  
 V.  
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jointly accused, and where any one of them was called as a witness either for or against his co-defendants. Assuming, however, that the re-apprehension of Kamal after an acquittal and on the same charge was unlawful, and that when he made his statement he was a free man, it may be that under s. 118 of the Act already referred to his evidence was admissible, but it is not evidence on which a Court would place much reliance, and the Sessions Judge, perhaps, has not overstated the case respecting it, when he remarks that "it affords no proof in support of the charge, and, under the circumstances in which he is placed, being yet on his trial, it is extremely unreasonable to suppose that he would speak the truth." There is however other evidence, which in Karim Bakhsh's case has already been accepted by this Court, and which in my opinion is sufficient to establish a very strong presumption of the guilt of the respondent which his defence failed to rebut. (The learned Judge then proceeded to consider this other evidence).

*Appeal allowed.*

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 June 9.

## APPELLATE CIVIL.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

KANAHIA LAL AND ANOTHER (PLAINTIFFS) v. KALI DIN (DEFENDANT) \*  
*Registration—Certificate of Sale—Mortgage.*

Where the Subordinate Judge of Dehra Dún made and signed the following endorsement on a deed of mortgage of immoveable property:—"This deed was purchased on the 1st December, 1875, at a public sale in the Court of Dehra Dún, by N and K, plaintiffs, for Rs. 2,400, under special orders passed by the Court on the 23rd November, 1875, in the case of N and K, plaintiffs, against R, for self, and as guardian of the heir in possession of the estate left by M"—held *per SPANKIE, J.* that this instrument operated as a sale-certificate, and consequently, as it related to immoveable property of the value of Rs. 100 and upwards, it required to be registered.

*Held per OLDFIELD, J.*—That as the instrument operated to assign the deed of mortgage to the auction-purchasers, it for the same reason required to be registered.

THIS was a suit for the possession of a plot of land appertaining to the premises of the Victoria Hotel at Dehra Dún. The facts

\* Second Appeal, No. 1351 of 1878, from a decree of W. C. Turner, Esq., Judge of Saharmpur, dated the 16th September, 1878, affirming a decree of F. S. Bullock, Esq., Subordinate Judge of Dehra Dún, dated the 30th May, 1878.

of the case, so far as they are material for the purposes of this report, were as follows: The plaintiffs claimed the land in virtue of a transfer to them by sale in the execution of a decree of a certain deed of mortgage of the Victoria Hotel and premises, dated the 26th September, 1866. They relied on an endorsement on this deed as the proof of their title. That endorsement was in the following terms: "This deed was purchased on the 10th December, 1875, at a public sale held in the Court of Dehra Dún, by Narain Das and Kanahia Lal (plaintiffs) for Rs. 2,400, under special orders passed by the Court on the 23rd November, 1875, in the case of Narain Das and Kanahia Lal against Richard Powell for self and as guardian of the heir in possession of the estate left by Matilda Powell." This endorsement was signed by the Subordinate Judge of Dehra Dún. The defendant contended that the endorsement should have been registered as it was an instrument operating to assign an interest in immoveable property of the value of upwards of Rs 100. The plaintiffs contended that the endorsement was the order of a Court only and did not require registration. The Subordinate Judge held that the endorsement operated as a certificate of sale, and, with reference to s. 17 of the Registration Act of 1871, should have been registered, and dismissed the suit. On appeal by the plaintiffs the District Judge also held that the endorsement operated as a certificate of sale and should have been registered and dismissed the appeal.

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The plaintiffs appealed to the High Court.

Pandit *Bishambhar Nath*, for the appellants.

Mr. *Howard*, for the respondent.

The judgments of the Court, so far as they are material to the above contention, were as follows:

SPANKIE, J.—I have myself been a party to a ruling in this Court that an instrument of the nature of the endorsement on the deed of mortgage dated 26th September, 1866, would require registration, that is, I have held that a sale certificate in regard to immoveable property of above Rs. 100 in value would require registration. The endorsement on the back of this deed of mortgage, which was sold at auction and purchased by the plaintiffs,

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is, I think, and operates as a certificate of sale, and I cannot regard it as an order of Court, simply because it is signed by the Subordinate Judge. The signature may authenticate the endorsement, but the endorsement itself is a certificate of sale and a transaction that confers upon the purchasers the rights of the mortgagee and gives them an interest in immovable property exceeding Rs. 100 in value.

OLDFIELD, J.—I concur in the proposed order for dismissing the appeal with costs. The endorsement by which the deed of mortgage was assigned to the plaintiffs as purchasers of it at auction sale is an instrument which required registration, and cannot be admitted in evidence.

*Appeal dismissed.*

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 June 11.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

PIAREY LAL (DEFENDANT) v. SALIGA AND ANOTHER (PLAINTIFFS)\*

*Wajib-ul-arz—Absconding co-sharers—Trustee—Act IX of 1871 (Limitation Act), s. 10—Limitation.*

Where a clause of the *wajib-ul-arz* of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from such village before such *wajib-ul-arz* was framed, sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to such *wajib-ul-arz*, alleging that their property had vested in such co-sharer in trust for them, held that before such co-sharer could be taken to have held their property as a trustee there must be evidence that he accepted such trust, and this fact could not be taken as proved by the *wajib-ul-arz*.

Held also that, assuming the trust to be established, as the purchaser had purchased in good faith for value and without notice of the trust, and was not the representative of such co-sharer within the meaning of s. 10 of Act IX of 1871, and had been more than twelve years in possession, the suit was barred by limitation.

This was a suit for the possession of a certain share in a village. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court, to which the defendant appealed from the decree of the lower appellate Court in favour of the plaintiffs. The defendant contended that the terms of the ad-

\* Second Appeal, No. 1217 of 1878, from a decree of Maulvi Maqsood Ali Khan, Subordinate Judge of Agra, dated the 6th September, 1878, reversing a decree of Maulvi Mubarak-ul-lah, Munsif of Muttra, dated the 27th March, 1878.