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contract of 1846, which is before us, if its provisions have not been disturbed by the operation of any subsequent legislation. If they have not, the matter stands now as it did in 1846, and we are bound by the rules mentioned in that Regulation. The question then to be considered is, whether by Act XXVIII of 1855, or by Act IV of 1882, the provisions of ss. 9 and 10 of Regulation XXXIV of 1803 have been affected or abrogated. Now I do not think that it can be seriously denied that one of the rights affecting the contract of mortgage is the right of the mortgagor to redeem the property mortgaged. Now, as I have said, the contract of mortgage in the present case being subject to the provisions of the Regulation, the charge would have been redeemed as soon as the principal mortgage-money with twelve per cent. interest had been realized by the mortgagee from the profits of the property. I think that those provisions of the Regulation of 1803 were incidents attached to the mortgagor's right, of which he was, and is, entitled to have the benefit. By Act XXVIII of 1855 all the rights conferred by this Regulation were specifically saved, and the same may be said of Act XIV of 1870.

Then with regard to Act IV of 1882, s. 2 of that Act specifically provides that " rights and liabilities arising out of a legal relation constituted before this Act comes into force" shall be saved. This being the view I take of the matter, the appeal must be allowed, and the decree of the Judge being reversed, the case is remanded under s. 562 to the Court below for disposal on the merits.

The costs hitherto incurred in the litigation are to be costs in the cause.

BRODHURST, J.—I am of the same opinion.

Appeal allowed.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

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April 20

KHUDA BAKHSH (PLAINTIFF) v SHEO DIN AND ANOTHER (DEFENDANTS)*

Lease—Lease from year to year—Act VIII of 1871 (*Registration Act*), *s.* 17 (4) —*Act III of* 1877 (*Registration Act*), *s.* 49.

In a suit for possession of a piece of land, and for rent of the same, the plaintiff produced in support of his claim two *sarkhats* or *kabuliyats* purporting to be

* Second Appeal No. 1154 of 1885, from a decree of F. E. Elliott, Esq., District Judge of Allahabad, dated the 13th June, 1885, confirming a decree of Pandit Indar Narain, Munsif of Allahabad, dated the 5th November, 1885.

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executed in his favour by the defendants, and dated respectively in January, 1875, and June, 1876. These documents were not registered. The first after reciting that the executant had taken the land from the plaintiff, on a specified yearly rent, and promised to pay the same yearly, proceeded as follows:—"If the owner of the land wishes to have it vacated, he shall give me fifteen days' notice, and I will vacate without making objection: if I delay in vacating the land, the owner can realize, by recourse to law, rent from me at the rate of Rs. 8 per annum." The second *sarkhat,* after reciting that the executants had taken the land from the plaintiff on a yearly rent specified, for six years, and promised to pay the same year by year, proceeded thus:—"And if the said Shaikh wishes to have the land vacated within the said term, he shall first give us fifteen days' notice, and we will vacate it without objection." The lower Courts held that the *sarkhats* were not admissible in evidence, as they required registration under s. 17 (4) of the Registration Act VIII of 1871, being leases of immoveable property from year to year or reserving a yearly rent.

Held that the two *sarkhats* created no rights except those of tenants-at-will, inasmuch as the clause common to both, to the effect that at any time, at the will of the lessor, the lessees were to give up the land at fifteen days' notice, governed all the previous clauses, and the defendants could be asked to quit at any time before the lapse of the term at fifteen days' notice.

Held therefore that the leases did not fall under s. 17(4) of Act VIII of 1871; that their registration was not compulsory; and that they could not be excluded from evidence under s 49 of Act III of 1877, which governed the question of admissibility, while Act VIII of 1871 governed the question whether registration was or was not compulsory.

THE plaintiff in this case, Khuda Bakhsh, sued three persons—Sheo Din, Thakur Dayal, and Sital, *Ahirs* by caste—for possession of certain land, and for rent of the same, from the 26th June, 1880, to the 22nd May, 1884, and for the removal of a "*charahi,*" a place for feeding cattle. The defendants set up as a defence to the suit, among other things, that the land did not belong to the plaintiff.

The plaintiff produced, in support of his title to the land and his claim for rent, two "sarkhats" or "kabuliyats," one purporting to be executed in his favour by Sital, son of Sheo Din, and the other by Sheo Din and Thakur Dayal, the former bearing date the 18th January, 1875, and the latter the 26th June, 1876 These documents were not registered.

The first document, after reciting that Sital had taken the land on a yearly rent of Rs. 4 and 4 sers of milk, for a place to live on, and for tethering cattle, from Khuda Bakhsh, set forth the following conditions:—"I promise and agree to pay the Rs. 4 and the 4 sers of milk yearly to the owner of the land without objection,

and will cause the receipt thereof to be indorsed on the *sarkhat:* any objection as to payment which is not so indorsed shall be unlawful * * * If the owner of the land wishes to have it vacated, he shall give me fifteen days' notice, and I will vacate without making objection: if I delay in vacating the land, the owner can realize, by recourse to law, rent from me at the rate of Rs. 8 per annum, and I will pay rent at the rate of Rs. 8 per annum without objection."

The second document, after reciting that Sheo Din and Thakur Dayal were in need of land for tethering cattle, and that they had taken the land in front of the door of Khuda Bakhsh, owned and possessed by him, on a yearly rent of eight annas, for six years, set forth the following conditions:—"We promise and agree to pay the rent year by year, without objection, to the said Shaikh Khuda Bakhsh, and will cause the receipt thereof to be indorsed on the *sarkhat*. Except payments indorsed on the *sarkhat*, we will claim no other payments, and if we do, it will be invalid and unlawful * * * * and if the said Shaikh wishes to have the land vacated within the said term, he shall first give us fifteen days' notice, and we will vacate it without objection."

The Court of first instance gave the plaintiff a decree for possession of the land, but dismissed the claim for rent and the removal of the "*charahi*," holding that the defendants had acquired by prescription a right to maintain the "*charahi*" on the land. It refused to take the "sarkhats" in evidence, holding that under s. 17 (4) of the Registration Act VIII of 1871, they were leases from year to year and therefore required to be registered, and not being registered, were not admissible in evidence. On appeal by the plaintiff, the lower appellate Court affirmed the decree of the first Court, concurring with it in its view in respect to the "sarkhats."

The plaintiff appealed to the High Court.

Pandit *Sundar Lal*, for the appellant.

Mr. *J. Simeon* and Mir *Zahur Husain*, for the respondents.

MAHMOOD, J.—I am of opinion that this appeal must prevail, and the decree of the lower appellate Court be set aside, and the case be remanded for disposal on the merits. My reasons for this

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view are, that the suit was one for possession of a piece of land and for demolition of a "*charahi*" situate thereon. Both the lower Courts have found that the land belongs to the plaintiff, but that the defendants have acquired a right of easement to keep their "*charahi*" thereon. The learned District Judge has expressly stated that the two kabuliyats, dated the 18th January, 1875, and 26th June, 1876, were not admissible in evidence, as they needed registration under s. 17 (4) of Act VIII of 1871, being leases of immoveable property from year to year or reserving a yearly rent. Both these documents are in the Hindustani language, and I have read them to my brother Tyrrell, and we both look upon these leases as creating no rights except those of tenants-at-will. I speak of them as "leases," because of the definition of that word in s. 3 of the Act of 1871. There is, indeed, a statement in the early part of these leases, that the land was given for more than a year; but the most important clause in them is one common to both of them, namely that *at any time*, at the will and mere wish of the lessor, the lessees were to give up the land only at fifteen days' notice. According to the well-understood rules of construction, this latter clause governs all the previous clauses. This being so, the defendants could be asked to quit at any time before the lapse of the term. It did not create even the usual lease from month to month, but the lessees could be ejected at fifteen days' notice, which is the ordinary term of notice pr bably required by the law, even previous to the passing of the Transfer of Property Act, and the principle of which has been incorporated in ss. 106 and 111 of that Act. The leases therefore do not fall under s. 17 (4) of the Registration Act VIII of 1871, which was in force when the leases were executed. The clause (which corresponds to s. 17 (*d*) of the present Registration Act III of 1877) is thus worded: "Leases of immoveable property from year to year or reserving a yearly rent." The leases before us do not answer this description, and no other clause of the section is pointed out under which they would fall. Their registration was therefore not compulsory, and they could not be excluded from evidence under s. 49 of Act III of 1877. The question whether registration was compulsory is governed by the registration law in force at the time that the deeds

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were executed; but the question of admissibility being a matter of procedure, would be governed by the present law. The Judge has altogether excluded from his consideration the two leases, which are the most important evidence in the case, and without which the merits of the case cannot be considered. We ask him to admit these leases, and re-consider the whole case upon the evidence, and to record a fresh judgment under s. 574, Civil Procedure Code. I would decree this appeal, and setting aside the decree of the lower appellate Court, remand the case to that Court, leaving costs to abide the result.

I may add that in support of the view taken by me of the leases in this case, our attention has been called by the learned pleader for the appellant to an unreported judgment of the Full Bench of this Court (1), which supports the view taken by me, though the interpretation of the law in that case related to the old Registration Act of 1864.

TYRRELL, J.—I am of the same opinion.

Case remanded.

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April 21.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

KARAMAT KHAN (PLAINTIFF) v. SAMI-UDDIN AND OTHERS (DEFENDANTS).*

Act IV of 1882 (*Transfer of Property Act*), *ss.* 41, 48,—*Transfer by ostensible owner—Sir-land—Act XII of* 1881 (*N.-W. P. Rent Act*), *s.* 7—*Meaning of "held"—Statute, construction of—Retrospective effect—Mortgage of sir-land before passing of Act XVIII of* 1873 (*N.-W. P. Rent Act*)—*Sale of mortgagor's proprietary rights while that Act was in force—Right of mortgagee.*

In 1869, *A* and *J*, two co-sharers of a moiety of a ten biswas share in a village (*F* and *W* being also co-sharers in the same moiety), joined with *H*, the holder of the other moiety, in giving to *K* a usufructuary mortgage of 87 bighas of land, being the whole of the *sir*-land appertaining to the ten biswas share. The deed of mortgage authorized the mortgagee to retain possession of the land until payment of the mortgage-money, and to receive profits in lieu of interest; and he obtained possession accordingly. In 1872, *F*, *W* and *A* gave to other persons a usufructuary mortgage of their five biswas share, together with a moiety of the 87 bighas of *sir*-land; and it was stated in the deed that half the mortgage-money due to *K* on the mortgage of 1869 was due by the executants, and that they accordingly left the same with the mortgagees in order that the latter might redeem. In

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* Second Appeal No. 1266 of 1885, from a decree of W. R. Barry, Esq., Additional Judge of Aligarh, dated the 22nd July, 1885, modifying a decree of Maulvi Muhammad Sami-ullah Khan, Subordinate Judge of Aligarh, dated the 28th March, 1884.

(1) Since reported in *Weekly Notes*, 1886, p. 115.