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punishable by section 215 of the Indian Penal Code nor that made punishable by section 215 read with section 511 of the Indian Penal Code; and it only remains to add that, acquitting them of the charge on which they have been convicted, I reverse their convictions under section 215 of the Indian Penal Code and the sentences passed on them thereunder, and as the petitioners are on bail, I direct that their bail bonds be cancelled.

## APPELLATE CIVIL.

*Before Mr. Justice Blair and Mr. Justice Aikman.*

NAND KISHORE LAL (DEFENDANT) v. SURAJ PRASAD (PLAINTIFF).\*

*Act No. IV of 1882 (Transfer of Property Act) sections 122 and 123—Gift—Registration—Registration of deed of gift of immovable property after the death of the donor.*

A gift of immovable property duly made by means of a registered deed is not invalid merely because registration of the deed of gift may have taken place after the death of the donor. *Hardei v. Ram Lal* (1) referred to.

THE facts of this case sufficiently appear from the judgments of the Bench.

Mr. *Abdul Raoof* and Pandit *Sundar Lal* for the appellant.  
Munshi *Gobind Prasad* for the respondent.

BLAIR, J.—The suit out of which this second appeal arises was a suit in which the heir-at-law of Gaya Prasad claimed possession of property late of Gaya Prasad. The defendant set up a deed executed by Gaya Prasad and alleged to be duly registered, which purported to be a deed of gift transferring to the defendant the property in question. The Court of first instance dismissed the plaintiff's claim, holding the deed of gift to be a valid transfer to the defendant of the property in question. The Court of first appeal reversed the decision of the Court of first instance upon

\* Second Appeal No. 218 of 1896 from a decree of V. A. Smith, Esq., District Judge of Gorakhpur, dated the 4th February 1896, reversing a decree of Pandit Rai Indar Narain, Subordinate Judge of Gorakhpur, dated the 12th November 1895.

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the finding that no good and valid deed of gift had ever been executed by Gaya Prasad and "completed by the donor, who died before it could be registered." That finding disposes of the appeal. The learned Judge did not enter upon the other questions raised in it. The defendant appeals to this Court upon the contention that under the circumstances of the case the deed in question is a good gift in law. The other grounds of appeal were not argued by the appellant's advocate, such arguments in his opinion being unnecessary at this stage. The provisions of the Transfer of Property Act in relation to deeds of gifts are to be found in sections 122 and 123. Section 122 defines gift, such definition covering all gifts whether of movable or immovable property. Section 123 in its first clause deals with instruments by which transfer by way of gift may be made of immovable property. There is a condition for the validity of every gift laid down in section 122 that there must be an acceptance by the donee during the lifetime of the donor and while he is still capable of giving. It might have well been provided by the Legislature, had it so intended, that such acceptance could not be effectively given until after the deed of gift had been registered. I find no such provision in that section, and am not inclined to impose restrictions not expressly enacted by law. Section 47 of the Registration Act provides that a registered deed shall operate from the time from which it would have commenced to operate if no registration thereof were required or made, and not from the time of its registration. In this case beyond doubt registration was effected *post mortem*, and we have the authority of the Full Bench case of *Hardei v. Ram Lal* (1) that such registration is not open to dispute. The question whether a good and valid acceptance of a gift may be made, in the case of immovable property, before registration, is not expressly decided in that case, but the effect of the decision apparently was to uphold the deed of gift in the case where the acceptance had been effected previous to registration. The result is that I would set aside the decree of the learned

(1) I. L. R., 11 All., 319.

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Judge and remind the case under section 562 of the Code of Civil Procedure for disposal upon the merits. I would also grant the appellant costs of this appeal.

AIKMAN, J.—I also am of opinion that this appeal must be allowed, and I concur in the order proposed. The plaintiff's suit was to recover possession of the disputed property. This suit was resisted by the defendant on the strength of a deed of gift executed in his favour by Gaya Prasad, the last owner of the property. The Court of first instance found in favour of this deed of gift and dismissed the plaintiff's claim. The plaintiff appealed to the District Judge. The first ground set forth in the memorandum of appeal to the lower Court is as follows:—"It is admitted by the lower Court that the deed of gift in dispute was not registered during the life-time of the donor, therefore its registration after the death of the donor is not sufficient to transfer the property." This plea was given effect to by the learned Judge. He says:—"As a matter of fact, there was no deed of gift completed by the donor, who died before it could be registered. The document was subsequently registered by the donor's widow, and respondent contends that this registration completed the gift. It did nothing of the sort. The registration may have been all right under section 35 of the Registration Act, and the document as being registered is fully admissible in evidence. But registration will not make a gift. The donee cannot accept until the donor has divested himself of his title. The donor can only divest himself of his title by a registered deed, and when the donor in this case died, there was no registered deed in existence." The learned District Judge has by the above decision held that section 123 of the Transfer of Property Act means that in order to be valid a deed of gift of immovable property must be registered during the life-time of the donor. In my opinion there is no ground for so holding. The word "registered" is defined in section 3 of the Transfer of Property Act, and there cannot be any doubt that the deed in question is a registered deed within the meaning of the definition. Section 4 of the same Act also provides that section 123

shall be read as supplemental to the Indian Registration Act of 1877. There can be no doubt then with reference to these sections that the deed of gift is a "registered instrument." The Legislature might, had it seen fit, have enacted that for the purposes of making a gift of immovable property, the transfer must be effected by an instrument signed by or on behalf of the donor, attested by at least two witnesses, and registered in the life-time of the donor. But that is not what has been enacted. For the above reasons I am of opinion that the view taken by the District Judge is erroneous.

BY THE COURT.—The Order of the Court is that the appeal is allowed, the decree of the lower appellate Court is set aside, and the case remanded under the provisions of section 562 of the Code of Civil Procedure for decision of the other grounds raised in the memorandum of appeal to the lower Court. The appellant will receive his costs of this appeal.

*Appeal decreed and cause remanded.*

*Before Mr. Justice Aikman.*

MUHAMMAD SAFDAR HUSEN (DEFENDANT) v. PURAN CHAND AND OTHERS  
(PLAINTIFFS).<sup>#</sup>

*Civil Procedure Code, section 25—Transfer—Application to High Court after rejection of a similar application by the District Judge—Application disallowed.*

Where an application to a District Judge to transfer a suit pending in the Court of the Subordinate Judge to his own file had been granted, the High Court declined to entertain an application for transfer of the same suit from the Court of the District Judge. *Farid Ahmad v. Dulari Bibi* (1) referred to.

The facts of this case sufficiently appear from the order of the Court.

THE Hon'ble Mr. Conlan and Mr. W. K. Porter for the applicant.

Pandit *Moti Lal* for the opposite parties.

AIKMAN, J.—This is an application asking this Court to transfer a civil suit now pending in the Court of the District

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\* Miscellaneous Application No. 94 of 1898.

(1) I. L. R., 6 All., 233.