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Indian Penal Code. In the absence of evidence to show that there was a common intention to cause death or such injury as was likely to cause death we think that section 34 of the Indian Penal Code would not apply. Our view is supported by the ruling in *Queen-Empress v. Duma Baidya* (1). In that case three persons assailed the deceased and gave him a beating in the course of which one of the prisoners struck the deceased a blow on the head which resulted in his death. All three were convicted of causing the death of the deceased, and were sentenced to transportation for life. In appeal the learned Judges, whilst sustaining the conviction of the accused who had struck the fatal blow, held that in the absence of proof that all the prisoners had a common intention to inflict injury likely to cause death, the other accused could not be convicted of murder. We have now to consider of what offence the appellants should be convicted. We think that, having regard to the fact that lathis were used by all the three assailants, and that the probable result of the use of lathis was at least grievous hurt, the common intention of the assailants may be deemed to have been to cause grievous hurt. We are therefore of opinion that all of them must be held to be guilty of causing grievous hurt. We so far allow the appeal as to set aside the conviction under section 304 and the sentence of transportation for life, and, convicting the appellants under section 325 of the Indian Penal Code, sentence each of them to rigorous imprisonment for five years with effect from the 4th of October 1906.

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APPELLATE CIVIL.

Before Mr. Justice Sir George Knox and Mr. Justice Richards.
KANHAYA LAL AND OTHERS (DEFENDANTS), v. SARDAR SINGH
(PLAINTIFF).*

Act No. III of 1877 (Indian Registration Act), sections 76 and 77—Registration—Suit to compel registration—Grounds of such suit.

Where a Registrar refused to register a document presented to him upon the grounds that there was not sufficient proof that the document was executed by the authority of the alleged executant and that there was undue and unexplained delay in presenting the document for registration, it was held that a

* First Appeal No. 65 of 1906 from an order of Babu Daya Nath, Subordinate Judge of Farrukhabad, dated the 12th of April 1906.

(1) (1890) I. L. R., 19 Mad., 488.

suit would lie under section 77 of the Indian Registration Act, 1877, to compel registration.

Held also that in a suit under section 77 of the Registration Act the Court is only concerned with the genuineness of the document sought to be registered and not with its validity.

Kudrathi Begum v. Najib-un-nissa (1) and *Raj Lalbi Ghose v. Debendra Chundra Mojumdar* (2) referred to.

The facts of this case are as follows :—

The plaintiff applied to the Sub-Registrar of Kanauj for the registration of a deed of mortgage alleged to have been executed by one Musammat Sundar on the 20th of August 1904. Before, however, registration was obtained Musammat Sundar died; her heirs refused to appear before the Sub-Registrar, and in consequence the plaintiff's application was struck off on the 17th June 1905. The plaintiff then applied to the District Registrar of Fatehgarh; but his application was rejected on the grounds (1) that the execution of the deed was not proved, and (2) that no satisfactory explanation was given for the long delay (nearly eight months) of the plaintiff in applying for registration. The plaintiff then brought the present suit under section 77 of the Registration Act, 1877, asking for a decree to compel registration of the mortgage deed. The Court of first instance (Munsif of Kanauj) held that the suit would lie; but dismissed it upon the ground that the mukhtarnama in virtue of which the mortgage deed was executed in behalf of Musammat Sundar was not shown to have been explained to the executant and therefore could not bind her. On appeal by the plaintiff the lower appellate Court (Subordinate Judge of Farrukhabad) held that the question of the validity of the deed was not a matter to be considered with reference to registration, but only its genuineness, and accordingly remanded the case to the Court of the Munsif under section 562 of the Code of Civil Procedure for disposal on the merits. Against this order of remand the defendants appealed to the High Court.

Maulvi Ghulam Mujtaba, and Munshi Gulzari Lal for the appellants.

Dr. Tej Bahadur Sapru, for the respondent.

KNOX and RICHARDS, JJ.—This was a suit under section 77 of the Registration Act. It appears that an application was

(1) (1897) I. L. R., 25 Calc., 93,

(2) (1897) I. L. R. 24 Calc., 668.

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made for the registration of a deed, dated the 22nd of August 1904, which purported to be executed on behalf of one Musammat Sundar, by one Makhan Lal as her mukhtar-am, in favour of one Sardar Singh, plaintiff in this suit. The document was not presented for registration within the four months prescribed by the Act. The document was in fact presented for registration on the 15th of April 1905, at which date Musammat Sundar was dead. The appellant, however, does not in any way support the appeal by reason of the fact of the death of Musammat Sundar before the deed was presented for registration. The Registrar refused to register the document, first on the ground that there was no proof that the deed was in fact the deed of Musammat Sundar, and, secondly, that the delay in presenting the deed for registration had not been sufficiently explained. The present suit was then brought under section 77 of the Registration Act. The appellant contends, first, that the suit cannot be maintained. This contention is based on the fact that there was no refusal by the Registrar to order the document to be registered under section 76, and that section 77 limits the power to bring suits in the Civil Court to orders of the Registrar refusing to order documents to be registered under sections 72 and 76. Section 76, clause (a), is as follows:—“Every Registrar refusing (a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of the Sub-Registrar,” omitting clause (b), “shall make an order of refusal, etc.” Section 77 then provides for a suit where the Registrar refuses to order the document to be registered. It is quite clear that some word or words has or have been accidentally omitted immediately after the words “district or” in section 76, clause (a), and that the clause should read:—“Every Registrar refusing to register a document except on the ground that the property to which it relates is not situate within his district, or to order that the document ought to be registered, etc.” In the present case the Registrar did refuse to order that the document should be registered, and in our opinion he did in fact refuse under the provisions of section 76 to order the document to be registered and accordingly the suit was maintainable in the Civil Court. The view we take is

supported by the ruling in *Kudrathi Begum v. Najib-unnessa* (1).

The second point urged was that, inasmuch as the deed was not executed by Musammat Sundar, it was necessary not only to ascertain whether or not she had given the mukhtarnama to Makhan Lal, but also to ascertain whether or not she as a parda-nashin lady had understood the contents of the mukhtarnama and had the same explained to her before she executed it. Neither in the Court of first instance nor in the grounds of appeal has any point been taken as to the evidence by which the execution of the mukhtarnama was proved. The mukhtarnama was duly registered and a certificate of its registration was given in evidence, but it was not proved that the mukhtarnama was fully explained and understood by Musammat Sundar. In our judgment this was not a matter which the Registrar or the Civil Court in a suit brought under the provisions of section 77 of the Registration Act should take into consideration. The Registrar and the Court in such a suit ought to concern themselves with the genuineness of the deed and not its validity. This view is supported by the decision of the Calcutta High Court in the case of *Raj Lakhi Ghose v. Debendra Chundra Mojumdar* (2). Accordingly the second ground of appeal also fails and we dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

KAMTA SINGH (PLAINTIFF) *v.* MUKHTA PRASAD AND ANOTHER
(DEFENDANTS).*

Lambardar and co-sharer—Suit for profits—Nature of liability of two lambardars for the same village—Res judicata.

Where there are two lambardars for the same village, they may, as a matter of convenience, elect to divide the village between them for purposes of collection; but such division will be purely a matter of convenience and will not affect the joint liability of the lambardars to the co-sharers.

A co-sharer sued the two lambardars jointly for profits, and the Court (an Assistant Collector) held that they were not liable to be sued jointly and

* Appeal No. 75 of 1906 under section 10 of the Letters Patent.

(1) (1897) I. L. R., 25 Cal., 93. (2) (1897) I. L. R., 24 Cal., 668.

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