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should state on oath. The learned Munsif accordingly issued a summons to Sobha Ram. When he appeared, the plaintiffs, who are appellants here, made certain allegations of collusion against Sobha Ram and asked to be allowed to withdraw from the reference. The learned Munsif refused to allow them to withdraw, and as Sobha Ram stated that the plaintiffs had not been in possession of the land in dispute for 16 years, and that the defendants had been in possession, he dismissed the suit. The decision of the Munsif was affirmed on appeal by the learned Additional Judge of Aligarh. The plaintiffs come here in second appeal. In my judgment the Court below was right. In my opinion when a party to a suit has made a reference of this kind, whether it be considered to be a reference to arbitration or a reference to the oath of a witness, such as is referred to in section 9 of the Indian Oaths Act, 1873, he should not be allowed arbitrarily to withdraw from the reference. In this case the plaintiffs produced no evidence whatever to support their allegation that the referee had colluded with the opposite party. I agree with what was said by Stuart, C.J., in *Lekhranj Singh v. Dulhama Kuar* (1). I would also refer to what is said in the case of *Ram Narain Singh v. Babu Singh* (2). For the above reasons I am of opinion that this appeal must fail and I dismiss it with costs.

Appeal dismissed.

[*Cf. also Bansidhar v. Sital Prasad, supra, p. 13.—ED.*]

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Rustomjee.
RAMJI MAL AND ANOTHER (DEFENDANTS) v. CHHOTÉ LAL (PLAINTIFF)
AND BANDHU LAL (DEFENDANT).*

*Act No. III of 1877 (Indian Registration Act), section 17—Registration—
Division of a mortgage into two to escape registration.*

Held that there is nothing in the Registration Act to render illegal the division of what was apparently one mortgage transaction relative to a loan of Rs. 198 into two mortgages of even date each for Rs. 99.

* Second Appeal No. 729 of 1905, from a decree of Babu Prag Das, Subordinate Judge of Bareilly, dated the 27th of February 1905, reversing a decree of Babu Prithwi Nath, Munsif of Aonla-Paridpur, dated the 12th of December 1904.

(1) (1880) I. L. R., 4 All., 302. (2) (1895) I. L. R., 18 All., 46, at p. 49.

THE facts of this case are as follows :—

The plaintiff Chhote Lal at an auction sale in execution of a decree held by one Ram Narain against Bandhu Lal purchased a certain house. Subsequently to this purchase one Bansidhar sued for the sale of the house in satisfaction of two mortgage-deeds held by him. Bansidhar obtained a decree and the house was put up for sale. When Bansidhar applied for execution of his decree, application was made by one Gulzari Lal for notification of his lien under two unregistered mortgage-deeds, each for Rs. 99 executed on the same day by Bandhu Lal, and this application, though objected to by the plaintiff, was allowed. The plaintiff then instituted the present suit, in which he prayed for a declaration that the two mortgage-deeds held by Gulzari Lal might be declared fictitious and collusive and not binding on the property purchased by him. The Court of first instance (Munsif of Bareilly) dismissed the suit. On appeal, however, the Subordinate Judge held that the two mortgage-deeds in suit formed one and the same transaction by which a sum of Rs. 198 had been borrowed by the mortgagor from the mortgagee, and that the transaction should have been embodied in one deed of the value of Rs. 198. If this had been the case, the deed would have required registration. On this reasoning the Court held that the deeds were inadmissible for want of registration, and accordingly allowed the appeal and decreed the plaintiff's claim. Against this decree the sons of Gulzari Lal, who had since died, appealed to the High Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Sarat Chandra Chaudhri*), for the appellants.

Dr. *Satish Chandra Banerji* (for whom Babu *Sital Prasad Ghose*), for the respondents.

STANLEY, C.J., and RUSTOMJEE, J.—The plaintiff respondent was the auction purchaser of a house. Subsequently to his purchase it was sold in execution of a decree enforcing a mortgage created by two unregistered bonds of different dates. When the property was put up for sale, the defendant, who had two mortgage bonds of the value of Rs. 99 each of even date (the 22nd of November 1899) applied that his lien may be proclaimed. The plaintiff objected, but his objections were dismissed. He then

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brought the present suit under section 283 of the Code of Civil Procedure. The Court of first instance dismissed the suit. An appeal was preferred to the District Judge's Court, and was decided by the Subordinate Judge. He held that as the two mortgage deeds formed portions of one and the same transaction by which a sum of Rs. 198 had been borrowed by the mortgagor from the mortgagee, the transaction should have been embodied in one deed of the value of Rs. 198. This would have necessitated the deed being registered. By thus securing the loan through two separate deeds the defendants avoided the expenses he would have had to incur under the Registration Act. He therefore held that the two deeds were invalid and hence he decreed the appeal and the plaintiff's claim, awarding him costs in both the Courts.

Before us the same point is raised in this second appeal, and it is urged that no fraud was committed in the transaction through having embodied the amount of the loan in two separate deeds of the value of Rs. 99 each. We agree with this view of the case. There is nothing in the Registration Act which forbids the splitting up of a transaction in this manner. We therefore allow this appeal and set aside the decree of the lower appellate Court. Since it decided this appeal on a preliminary point, we remand it under section 562 of the Code of Civil Procedure for decision of the remaining points on their merits. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

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Before Mr. Justice Sir George Knox and Mr. Justice Aikman.

SHI GOPAL AND OTHERS (DEFENDANTS) v. AYESHA BEGAM AND ANOTHER (PLAINTIFFS), AND KASIM ALI AND OTHERS (DEFENDANTS).*

Possession—Suit for possession based on possessory title of plaintiffs' predecessor—Plaintiffs never themselves in possession—Cause of action.

Musammat Wazir Jan, the owner of certain zamindari property, died on the 18th of December 1889, leaving no direct heirs. After her death the property was taken possession of by the four nephews of Musammat Wazir Jan's deceased husband. One of these nephews, Bisharat, died on the 7th of August 1890, whereupon the share of which he had been in possession was appropriated by his son Kasim to the exclusion of Kasim's two sisters Ayesha

* Second Appeal No. 197 of 1904 from a decree of W. F. W. Wells, Esq., District Judge of Agra, dated the 14th of December 1903, confirming a decree of Babu Baidya Nath Das, Munsif of Agra, dated the 23rd of February 1903.