

"I, therefore, order the record to be submitted to the Hon'ble High Court under section 438, Code of Criminal Procedure, with the recommendation that the order of the Joint Magistrate as to payment of compensation be set aside, and that the amount, if paid, be ordered to be refunded. The Joint Magistrate will be called upon to furnish the necessary explanation, if any."

KNOX, J. — This case has been rightly reported. I find that the learned Magistrate in his judgement says :—"The case is utterly false and I acquit all the accused." Section 250 of the Code of Criminal Procedure was not intended to meet the case of false accusations. It was meant to meet with frivolous and vexatious accusations. Where a person complains that he was kept in confinement for three days, he is going a long step beyond making a frivolous or vexatious accusation. Over and above this, the words contained in section 250 are clear. If a Magistrate wishes to direct payment of compensation in frivolous cases, he is to give the direction by his order of discharge or acquittal. In other words, before pronouncing the order of discharge or acquittal, he has to call upon complainant and to record and consider any objections that the complainant may make. After having done so, and not before, should he place on record or, at any rate, only then, pronounce his order of discharge or acquittal. I set aside the order of payment of Rs. 30 as compensation and direct that it be returned to Ram Singh.

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APPELLATE CIVIL.

1912.
February 22.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.
NATH MAL AND ANOTHER (PLAINTIFFS) v. ABDUL WAHID KHAN AND
OTHERS (DEFENDANTS). *

*Act No. III of 1877 (Indian Registration Act), section 32—Registration—
"Presentation".*

Where the executants of a document which it is desired to register are present acquiescing in the handing over of the document to the Registrar for registration, the fact that the physical act of handing the document to the Registrar is performed by a person who is not authorized to 'present' the document for registration will not render the presentation invalid.

The facts of this case were as follows :—

The plaintiffs brought a suit on the basis of a registered mortgage bond, dated the 27th of January, 1887. In the court of the Subordinate Judge of Saharanpur a preliminary objection was

* First Appeal No. 28 of 1911 from a decree of Muhammad Shafi, Subordinate Judge of Saharanpur, dated the 28th of September, 1910.

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taken by the defendants that the registration of the deed was invalid. What happened at the time of the registration was that the deed was handed over to the Registrar by one Kundan Lal, who was evidently representing the mortgagees, but held no power of attorney as is mentioned in section 33 of the Registration Act. But the executants of the deed, who were present and identified before the Registrar, admitted the execution of the deed and the receipt of consideration. The Subordinate Judge dismissed the suit on the ground that the registration of the deed was invalid inasmuch as there was no proper presentation of the deed according to the provisions of section 32 of the Indian Registration Act of 1877.

The plaintiffs appealed.

Mr. *Agha Haidar*, for the appellants :—

Even if the deed was handed over by Kundan Lal to the Registrar, inasmuch as the executants were present, acquiesced in the presentation and admitted execution of the deed, the presentation was a proper one. *Wilaiti Begam v. Fazal Husain Khan* (1). Therefore the document, the basis of the suit, is in every respect a valid one.

Babu Durga Charan Banerji, for the respondents :—

The endorsement on the deed by the Registrar shows clearly that the deed was presented for registration by Kundan Lal, who had no power to present it, either under the provisions of section 32 or 33 of the Registration Act. Those two sections enumerate the persons who alone can present a deed for registration. The defect in presentation was not covered by section 87 of the Act. *Ishri Prasad v. Baij Nath* (2); *Mujib-un-nissa v. Abdur Rahim* (3). The deed being invalid for want of proper registration, and the suit was rightly dismissed.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit upon a mortgage. Paragraph 1 of the plaint, which alleged that the plaintiffs were mortgagees of the property, was admitted in the written statement. The learned Subordinate Judge, however, dismissed the suit upon the ground that the mortgage deed had not been properly “presented” for registration. The presentation of a mortgage deed for registration is a proceeding which is prescribed by section 32 of the Registration Act of

(1) (1910) 9 A. L. J., 148.

(2) Weekly Notes, 1906, p. 195.

(3) (1900) I. L. R., 23 All., 238.

1877, which was in force at the time when this document was registered. A deed must be "presented" for registration by some person executing or claiming under the deed, or by his agent, or representative or assign duly authorized in the manner prescribed by the Act. The name of Kundan Lal appears on the endorsement on the deed, which was in fact registered. It also appears from the endorsement that the mortgagors were present and were identified before the Registrar. Kundan Lal was examined as a witness, and he stated that he was present at the registration representing the mortgagees. He states that the mortgagors were all present. It is true that he says that it was not he but the mortgagors who "presented" the deed. Evidently he was afraid that if he did state that he himself "presented" the document, the side for whom he was giving evidence would lose their case. It seems to us that the word "presented" has a technical meaning and that we ought to consider what the real facts are, and then to come to a conclusion whether having regard to those facts the document was duly "presented" within the meaning of the section. Taking into consideration the evidence of Kundan Lal coupled with the endorsement on the bond, we have not the least doubt that all the mortgagors were present at the time of registration, and when the document was brought before the Sub-Registrar, Kundan Lal was sent to represent the mortgagees, to pay over the money to the mortgagors and to bring the document away after registration. It is true that Kundan Lal was not authorized in the manner prescribed by the Act, and it is clear that if none of the executants were present, Kundan Lal alone could not have "presented" the document because he was not "duly authorized," and the presentation by him would not have satisfied the requirement of the Act. We think, however, that where the executants were present acquiescing in the handing over of the document to the Registrar for registration, the document was being "presented" by them for registration within the meaning of the Act. We accordingly think that this appeal ought to be allowed. We allow the appeal, set aside the decree of the court below and, remand the case to that court with directions that it be readmitted under its original number in the register and tried on the merits. Costs here and hitherto will follow the result.

Appeal allowed. Cause remanded.

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