BY THE COURT.—The order of the Court is that the appeal be allowed and the plaintiff's suit be dismissed with costs throughout.

Appeal allowed.

Before Mr. Justice Sulaiman and Mr. Justice Boys.

1927 April, 26.

GHARIB RAI AND ANOTHER (PLAINTIFFS) *v.* MUKH LAL RAI AND OTHERS (DEFENDANTS).*

Act No. XVI of 1908 (*Indian Registration Act*), *section* 17(b) —*Registration—Compromise—Recital of agreement between the parties to a mutation case coupled with a request that the property in suit might be partitioned in a particular way.*

Held, following the principles laid down in *Satrohan Lal* v. *Nageshwar Prasad* (1), *Bakhtawar* v. *Sundar Lal* (2) and *Mahomed Musa* v. *Aghore Kumar Ganguly* (3), that a document filed in a mutation case which merely set forth that the parties had settled the matters in dispute between them and that they desired that the property in suit should be partitioned in such and such a manner was not a document the registration of which was necessary.

THE facts of this case sufficiently appear from the judgement of BOYS, J.

Dr. *M. L. Agarwala*, for the appellants.

Munshi *Narain Prasad Ashthana* and Munshi *Baleshwari Prasad*, for the respondents.

BOYS, J.—This appeal raises the hitherto much debated question as to the effect of the non-registration of a document presented to a mutation court asking for the names of the applicants to be entered in a particular way and at the same time setting forth in one form or another that the parties have come to an agreement between

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* Second Appeal No. 437 of 1925, from a decree of K. A. Sams, District Judge of Ghazipur, dated the 3rd of December, 1924, confirming a decree of Raja Ram, Additional Subordinate Judge of Ballia, dated the 12th of December, 1923.

(1) (1916) 19 Oudh Cases, 75; 35 Indian Cases, 770.

(2) (1925) I.L.R., 48 All., 213.

(3) (1914) I.L.R., 42 Calc., 801.

1927

GHARIB RAI v. MUKH LAL RAI.

Boys, J.

themselves. The document in question says that the parties have consulted amongst themselves (*musalehat hui*) to the effect that certain areas of land shall remain in the possession of the several applicants respectively; that they will be liable for their own shares of the rent and shall have no concern with each other's shares and they will be bound by this *sulehnamah*. After setting forth these facts they pray that entry may be made in the revenue records in accordance therewith.

Entry in the revenue records was made accordingly and for some nine or ten years the parties have acted on this arrangement. We have been referred to some 12 or 15 decisions of this Court, and I have carefully examined these and a number of others. It is not necessary to re-state the old arguments on this side and on that, which have been urged many times over and reported in many decisions. It is clearly possible to pick out isolated words and phrases in this document which, it may be argued, indicate, though perhaps indefinitely, a declaration of title. I am putting it in the most extreme way in the plaintiff's favour. On the other hand I agree wholly with the view of Mr. Justice LINDSAY, then Judicial Commissioner of the Oudh Court, reported in *Satrohan Lal* v. *Nageshwar Prasad* (1). It is desirable in my opinion, not to found a decision in these cases on a particular phrase here and there, but to take a broad view of the circumstances under which the particular document was written, and then, keeping in mind that broad view, to determine the matter in accordance with the principles laid down in the case to which I have referred and which are in essentials the principles adopted by the same Judge and by Mr. Justice SULAIMAN in *Bakhtawar* v. *Sundar Lal* (2). Taking the facts of this case broadly, it is clear that there was a dispute between the plaintiffs and defendants, each of them claiming to be

(1) (1916) 19 Oudh Cases, 75; 35 Indian Cases 770.

(2) (1925) I.L.R., 48 All., 213.

entitled to the property of the deceased. Mutation proceedings commenced and they were settled between the parties. There is nothing whatever to show that there would have been any necessity for a document being drawn up between the parties at all, but for the fact that it was necessary to secure the termination of the mutation proceedings and necessary to secure that termination in conformity with the arrangement arrived at between the parties. For this purpose it was necessary to set forth the terms upon which the parties had come to an agreement in reference to the particular matter of the entry of their names against particular portions. I would further refer to the decision of their Lordships of the Privy Council in *Mahomed Musa* v. *Aghore Kumar Ganguly* (1). Applying the principles of those cases and more especially the principles set out in the judgements of Mr. Justice LINDSAY and Mr. Justice SULAIMAN, I would hold that the document in question was prepared merely with a view to indicating to the revenue court the manner in which the parties had agreed that their names should be entered. I think it would be wrong to hang, upon the phrases that the parties would pay their own shares of the rent and be bound by the terms upon which they had agreed as set out in the document, a finding that the document created or declared a title. As to the meaning of the term " declares " reference may be made to the judgement of Mr. Justice LINDSAY at page 774 of the case *Satrohan Lal* v. *Nageshwar Prasad* (2).

I would, therefore, dismiss the appeal with costs.

SULAIMAN, J. :—I fully agree.

Appeal dismissed.

(1) (1914) I.L.R., 42 Calc., 801.

(2) (1916) 19 Oudh Cases, 75 35 Indian Cases, 770.

REVISIONAL CRIMINAL.

Before Mr. Justice Lindsay.

1927
April, 27.

EMPEROR *v.* LODAI.*

Act No. IX of 1890 (*Indian Railways Act*), *sections* 3(4) *and* 122—" *Railway* "—*Staff-quarters not part of a* " *railway* " *within the meaning of section* 3(4).

Staff-quarters or any building of a residential character, though they may be on railway land, cannot be deemed to be a part of a " railway " within the meaning of section 3(4) of the Indian Railways Act, 1890.

Where a person was found playing cards at the house of a railway employee, situated between two railway lines, and there was no evidence to show that his entry on these premises was unlawful: *held*, that he could not rightly be convicted under section 122 of the Railways Act. *Margam Aiyar* v. *Mercer* (1), referred to.

THIS was a reference made by the Additional Sessions Judge of Mirzapur. The facts of the case sufficiently appear from the Sessions Judge's order.

Munshi *Kumuda Prasad*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*) for the Crown.

The following is the *Referring Order* :—

" The applicant was tried summarily by the Magistrate and was fined Rs. 10 under section 122 of the Indian Railways Act (IX of 1890).

Two things are necessary to bring a man under that section, (1) that the place of entry must be ' railway ' as defined in section 1(*b*) of the Act and (2) the entry should have been unlawful in the inception. If the entry was not unlawful in the beginning, neither part of the section 122 of the Act would apply.

From the judgement of the learned Magistrate it is clear that the place where the accused was found is occupied as quarters by the railway employees. In *Margam Aiyar* v. *Mercer* (1), it was found by a Division Bench of the Madras High

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* Criminal Reference No. 232 of 1927.
(1) (1914) 23 Indian Cases, 177.