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record in which two Courts have "exercised a jurisdiction not vested in them by law," and I cannot but think that this is just one of those cases in which s. 622 was intended to give us power to put matters right. It would be absurd for us, when our attention has been directed to them, to allow proceedings to continue upon a formal record as having force or effect, when from the commencement to the end they have been carried on in Courts having no jurisdiction. Equally as the Assistant Collector had no power to dismiss the plaintiff's claim, so was it incompetent for the Judge to decree her appeal and give her the relief she asked. It seems to me that s. 622 enables us to entertain and act upon the present application, though I am scarcely as yet prepared to go the length contended for by Mr. Banarji on behalf of the opposite party, that "pass such order in the case as the High Court thinks fit" permits us to exercise an absolute discretion as to the merits of a case, and so in the present instance, if we think substantial justice has been done, allows of our refusing to interfere. I do not consider it possible for us to adopt any such course. The decree which the plaintiff obtained from the lower appellate Court is not worth the paper it is written upon, and no declaration or action of ours could give it vitality or effect. The order therefore will be as proposed by the Chief Justice that the whole of the proceedings in the Revenue and lower appellate Court should be quashed, and we direct that the plaint be returned to Sakina Bibi, the opposing party to this application, for presentation to the Small Cause Court. The appellant must have the costs of this application.

*Application allowed.*

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January 5.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Straight.*

NABIRA RAI AND ANOTHER (DEFENDANTS) v. ACHAMPAT RAI (PLAINTIFF).\*

*Occupancy-tenancy—"Inalienable property"—Mortgage—Registration—Act I of 1868 (General Clauses Act), s. 2 (5).—Act III. of 1877 (Registration Act), ss. 17, 49.*

The obligee of a bond dated the 29th October, 1869, sued to recover the amount due thereunder from the property hypothecated therein. By the terms of the

\* Second Appeal, No. 734 of 1880, from a decree of Maulvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 4th May, 1880, modifying a decree of Munshi Kulwant Prasad, Munsif of Basra, dated the 26th February, 1880.

bond the obligor agreed to pay the sum of Rs. 75 with interest at two rupees per cent. per mensem on the 12th May, 1873. The amount thus secured exceeded Rs. 200. The property mortgaged was the tenant-holding of the obligor. Held that the interest of a tenant in his holding was right or interest to or in immoveable property; that consequently such bond, which affirmed as a security a right of which the value, estimated by the amount secured, exceeded Rs. 100, ought to have been registered; that being unregistered it could not affect the "immoveable property comprised therein," or "be received in evidence of any transaction affecting" the same; and that the suit brought on the basis of such bond, for the enforcement of the lien, must in the absence of the bond fail. *Himmat Singh v. Sewa Ram* (1) followed.

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NABIRA RA  
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RAI.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Lala *Lalta Prasad*, for the appellants.

*Hanuman Prasad*, for the respondent.

The following judgment was delivered by the High Court (PEARSON, J., and STRAIGHT, J.):—

PEARSON, J.—This is a suit for the recovery of the amount due under a bond dated 29th October, 1869, from the property therein hypothecated. By the terms of the bond the executants thereof agreed to pay the sum of Rs. 75 with interest at two per cent. per mensem on the 12th May, 1873. The amount thus secured was in excess of Rs. 200. The property mortgaged was the tenant-holdings of the bond-debtors. Referring to the definition of immoveable property contained in the General Clauses Act, we must hold that the interest of a tenant in his holding is right or interest to or in immoveable property; that consequently the bond which affirmed as a security a right of which the value, estimated by the amount secured, exceeded Rs. 100, ought to have been registered; that, being unregistered, it cannot affect the "immoveable property comprised therein," or "be received in evidence of any transaction affecting" the same; and that the suit brought on the basis of the bond, for the enforcement of the lien, must in the absence of the bond fail. Therefore, reversing the decrees of the lower Courts, we decree the appeal and dismiss the suit with all costs. In this decision we follow the Full Bench decision in *Himmat Singh v. Sewa Ram* (1).

(1) I. L. R., 3 All., 157.