LETTERS PATENT.

Before Dawson Miller, C. J. and Mullick, J.

MAHARANI JANKI KUER 1924.

v. *January, 4.*

BIRJ BHIKHAN OJHA.*

Registration Act, 1908 (*Act XVI of* 1908), *sections* 17 *and* 49—*written agricultural lease, admission of, in absence of registration—admission of other evidence—Evidence Act*, 1872 (*Act* 1 *of* 1872), *section* 91.

An agricultural lease which has been reduced to writing requires to be registered under section 17 of the Registration Act, 1908.

If the document is not registered it cannot under section 49, be received in evidence of the lease, and in such a case section 91 of the Evidence Act, 1872, debars other evidence of the lease being given. But the document may be admissible for a collateral purpose, e.g., to shew the nature or the defendant's possession.

Jagadish Chandra Sanyal v. *Lal Mohan Poddar*(1), distinguished.

Where a written document is defective as a valid and finally concluded agreement such defect may be supplied by the subsequent actings and conduct of the parties, as where subsequent acts of the parties themselves disclose a state of affairs consistent only with the existence of an agreement mutually recognised and acted upon as if the instrument were binding.

Maddison v. *Alderson*(2), *Mahomed Musa* v. *Aghore Kumar Ganguli*(3), *Jagannath Marwari* v. *Sm. Chandni Bibi*(4), *Thakore Fatesingji Dipsangji* v. *Bamanji Ardeshir Dalal*(5), *Jhamplu* v. *Kutramani*(6) and *Varada Pillai* v. *Jeeverathnammal*(7), referred to.

*Letters Patent Appeal No. 54 of 1923.

(1) (1911) 13 Cal. L. J. 318.
(2) (1883) 8 A. C. 467.
(3) (1915) I. L. R. 42 Cal. 801(818), L. R. 42 I. A.
(4) (1921-22) 26 Cal. W. N. 65.
(5) (1903) I. L. R. 27 Bom. 515.
(6) (1917) I. L. R. 39 All. 696.
(7) (1920) I. L. R. 43 Mad. 244, L. R. 46 I. A. 288.

1924.

MAHARANI JANKI KUER v. BIRJ BHIKHAN OJHA.

Appeal by the plaintiff under the Letters Patent.

The suit out of which this appeal arose was instituted by the appellant under section 106 of the Bengal Tenancy Act against the respondents, claiming a declaration that the status of the respondents was that of occupancy-*raiyats* and not *raiyats* holding at a fixed rate as recorded in the recent revision survey and settlement.

The Assistant Settlement Officer found in favour of the respondents and dismissed the suit.

An application in revision under section 108 of the Act was preferred before the Settlement Officer who affirmed the decision of his subordinate and dismissed the application.

An appeal was then preferred to the Special Judge who reversed the decision of the lower Courts on the ground that the entry in the record-of-rights declaring that the respondents were tenants at a fixed rate was based upon a *sanad* dated 1289*F*. (1882 *A.D.*) granted by the predecessor of the appellant to the predecessor of the respondents but as the document was a lease requiring registration under section 17 of the Registration Act it was not admissible in evidence under section 49 of the Act as it had not been registered. As there was, in his opinion, apart from the document and the record-of-rights which was based on it, no other evidence by which it could be shown that the respondents were tenants holding at a fixed rate he allowed the appeal and ordered the entry to be amended by recording them as occupancy tenants instead of tenants holding at a fixed rate.

From this decision the respondents appealed to the High Court. The appeal was heard by Ross, J., who considered that apart from the *sanad* there was other evidence from which the respondents' status as tenants at a fixed rate might be proved, and on this ground alone he would have remanded the case for

further consideration by the Special Judge, but he was further of opinion that the *sanad* being an agricultural lease did not require registration, being exempt under section 117 of the Transfer of Property Act. He accordingly allowed the appeal, set aside the decision of the Special Judge and restored that of the Assistant Settlement Officer. The learned Judge did not consider the effect of the Registration Act or of section 91 of the Evidence Act in relation to leases effected by a written document.

The present appeal was preferred under the Letters Patent from the decision of Ross, J.

Lachmi Narain Sinha, for the appellant.

S. Saran, for the respondent.

DAWSON MILLER, C.J. (after stating the facts, as set out above, proceeded as follows) :—

It should be stated here that the *sanad* has been found by all the Courts to be a genuine document. It grants a *mukarrari* interest of the land in suit measuring 7 *bighas* to Bisweswar Ojha, the predecessor of the respondents, for an indefinite period at a fixed rent of Re. 1 *per bigha*. If it is admissible in evidence it is conclusive in favour of the respondents. In the cadastral survey and record-of-rights, prepared some years before the recent revisional survey, the recorded *raiyat* was one Mahadeo Darzi, a servant of the respondents' father who was stated to be an occupancy *raiyat* holding under the proprietor and not under the respondents' father and the rent recorded was Rs. 6. This was relied on by the appellant as showing that the rent was subject to variation and not fixed. The respondents' explanation was that at that time their father had a temporary tenure of the whole village and, fearing that the *raiyati* interest might become merged in his tenure, he had the holding entered in the *farzi* name of his servant but that the rent was in fact paid by him and was always Rs. 7. The rent receipts showed that the rent paid was Rs. 7 and not Rs. 6

1924.

MAHARANI JANKI KUER v. BIRJ BHIKHAN OJHA.

DAWSON MILLER, C.J.

all along. There was also an entry in the cadastral survey record showing some trees on the holding to be in possession of the *mukararridar*, and it was not suggested that there was any other *mukarraridar* than the respondents' father or his predecessor. There appears to have been some evidence, therefore, apart from the *sanad* from which an inference might possibly be drawn as to the status of the respondents although the learned Special Judge had stated that there was no such evidence.

The main question for determination is whether the *sanad* is admissible in evidence as held by Ross, J. By section 107 of the Transfer of Property Act (Act IV of 1882) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent can be made only by a registered instrument. The present lease comes within that description. By section 117 of the Act none of the provisions of Chapter X (which includes section 107) apply to leases for agricultural purposes. It is, therefore, not necessary under the Transfer of Property Act that a lease for agricultural purposes, which the present lease is, should be made by a written instrument. It may be effected by oral agreement and when so effected no registration is required, but if it is reduced to writing then under the Registration Act certain consequences follow. Section 17 of the Registration Act of 1908 provides that certain documents, including leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, shall be registered if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which any of the previous Registration Acts from 1864 up to 1908 applies. The Indian Registration Act III of 1877 was in force on the date when the *sanad* was executed and applied to the district in which the property was situate. The lease therefore being in the form of a document, and not merely oral, required registration under the section last named and

by section 49 of the same Act no document required by section 17 to be registered shall (*a*) affect any immovable property comprised therein, or (*b*) be received as evidence of any transaction affecting such property unless it has been registered. It seems to follow, therefore, that the *sanad* relied upon being a document requiring registration under section 17 cannot under section 49 be received as evidence of the lease. If the document itself is not admissible no other evidence of its terms can be given because section 91 of the Evidence Act provides:

> "When the terms of a contract or of a grant or of any other disposition of property have been reduced to the form of a document and in all cases in which any matter is required by law to be reduced to the form of a document no evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained."

The result of these enactments appears to be that a lease of immovable property, such as that under discussion, need not be in writing. It may be effected by oral agreement in which case no question of registration arises and the lease may be proved in the same way as any other verbal agreement, and even documentary evidence may be admissible in support of the oral agreement, but if the lease or grant is in the form of a document then the only evidence admissible in proof of the terms of the document is the document itself and unless it is registered even the document itself cannot be admitted in evidence as proof of any transaction affecting the property.

In *Jagadish Chandra Sanyal* v. *Lal Mohan Poddar* (1), relied on by the respondents and by Ross, J., the question did not really arise and the case is no authority for the proposition that a written document granting a lease for agricultural purposes does not require registration. In that case it was found that no formal lease was executed but an

(1) (1911) 13 Cal. L. J. 318.

1924.

MAHARANI JANKI KUER v. BIRJ BHIKHAN OJHA.

DAWSON MILLER, C.J.

amalnama was relied on by the defendants containing a reference to the terms of the lease. This document, however, was not produced as it could not be found and nothing seems to have turned upon it. The case must be regarded as one in which the lease was not contained in a written document and to which the Registration Act and section 91 of the Evidence Act had no application, and in fact neither of these statutes is referred to in the judgment. I consider, therefore, for the reasons already given that the judgment appealed from cannot be supported upon the grounds given in the judgment.

It has been argued that this result creates an anomalous state of affairs involving great hardship upon the lessee who takes a written lease but omits to register it, as in such a case he is precluded from proving the terms of his grant whereas had he been content with a title created in a less formal manner by word of mouth he would have been under no such disability. Whatever may be the force of this criticism it is not in all cases necessary for the lessee to rely upon the terms of the written lease as proof of his interest. If the subsequent acts of the parties themselves disclose a state of affairs consistent only with the existence of an agreement mutually recognized and acted upon as if the instrument were binding, then, although the written document may be defective as a valid and finally concluded agreement, such defects may be supplied by the subsequent actings and conduct of the parties. As pointed out by Lord Selbourne in *Maddison* v. *Alderson* (1): "The defendant is really 'charged' upon the equities resulting from the acts done in execution of the contract and not within the meaning of the Statute of Frauds upon the contract itself." In *Mahomed Musa* v. *Aghore Kumar Ganguli* (2), where the equitable doctrine laid down in *Maddison* v. *Alderson* (1) and other authorities was

(1) (1883) L. R. 8 A C. 467.

(2) (1915) I. L. R. 42 Cal. 801(818), L. R. 42 I. A. 1.

quoted and applied, Lord Shaw in delivering the judgment of the Judicial Committee said: "Many authorities are cited in support of these propositions from English and Scotch law, and no countenance is given to the proposition that equity will fail to support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon.....Their Lordships do not think that the law of India is inconsistent with these principles. On the contrary it follows them."

It seems to me that the question for consideration in this appeal is whether the defendants and their predecessors have been in possession since 1882, exercising the rights conferred by the *sanad* with the consent and acquiescence of the landlord. Although apart from the *sanad* itself it might be difficult in the present instance to arrive at a satisfactory conclusion as to the terms upon which the defendants were exercising their right of possession nevertheless if the *sanad* is admissible in evidence to prove the nature of their possession then no difficulty arises. It must be conceded that section 49 of the Registration Act precludes the use of the document for the purpose of proving a binding contract between the parties creating an interest in the property nor can it be received as evidence of any transaction affecting the property. But, as already pointed out, it is not necessary to rely upon such a transaction if the acts of the parties themselves are consistent only with the recognition on the one hand and the exercise on the other of those rights which the document, although not finally binding as a contract, purported to confer. That the defendants and their predecessors have been in possession since 1882 as tenants is proved and that the same rent has all along been paid is found by all the Courts. There is also some evidence apart from the *sanad* which, when examined, might possibly lead to the conclusion that their possession was that of tenants at fixed rates. But if the *sanad* is admissible, not for the purpose of proving a concluded transaction

1924.

MAHARANI JANKI KUER v. BIBI BHIKHAN OJHA.

DAWSON MILLER, C.J.

transferring an interest, which it is clearly not, but for the collateral purpose of proving the nature of the defendants' possession then there can be no doubt that the plaintiff's claim must fail, the document having been accepted as genuine. There is ample authority for the proposition that a document inadmissible for the purposes mentioned in section 49 of the Registration Act may nevertheless be admitted for a collateral purpose, as for example to explain why a donee under a deed imperfect through lack of registration was in possession [*Jagannath Marwari* v. *Chandni Bibi* (1)], or to prove the nature of that possession [*Thakore Fatesingji Dipsangji* v. *Bamanji Ardeshir Dalal* (2), *Jhamplu* v. *Kutramani* (3) and *Varada Pillai* v. *Jeevarathnammal* (4)]. In the last named case it was held by the Judicial Committee that although certain unregistered documents were not admissible to prove a gift they could be referred to as explaining the nature and character of the possession subsequently held by the donee and as she had been in possession for upwards of twelve years she had acquired an indefeasible title. Applying the same rule in the present case I consider that the *sanad* may be referred to as explaining the nature and character of the defendants' possession and as they and their predecessors have been in possession, ostensibly in virtue of the *sanad*, as tenants at fixed rates for a period of over thirty years before the institution of the suit. I am of opinion that the plaintiff's claim fails and the appeal should be dismissed with costs.

MULLICK, J.—I agree.

Appeal dismissed.

(1) (1921-22) 26 Cal. W. N. 65.
(2) (1903) I. L. R. 27 Bom. 515.
(3) (1917) I. L. R. 39 All. 696.
(4) (1920) I. L. R. 43 Mad. 244; L. R. 46 I. A. 295.