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section 182 which does not require the complaint in writing of the Magistrate who took cognizance of the complaint of the 25th January.

It appears, however, that the petitioner has already been convicted in the counter case and the necessity for prosecuting him for making a false charge is not clear. If the appeal Court maintains the sentence of imprisonment which we learn has been passed upon the petitioner, there is little object in punishing him again for giving false information to the police.

MULLICK, J.

The application in revision is dismissed.

JWALA PRASAD, J.—I agree.

APPELLATE CIVIL.

Before Bucknill and Macpherson, J.J.

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June, 16.

SRIMATI PEARI DAI DEBITORS

v.

NAIMISH CHANDRA MITRA.*

Registration Act, 1908, (*Act XVI of* 1908), *section* 17 *and* 49—*Lease of immoveable property for five years*—parwana *not registered, admissibility of—induction of lessee—part-performance.*

A written application or proposal was made by the naib to the proprietors stating that he had the opportunity of effecting a lease on favourable terms with certain persons for five years. The proposal contained certain suggestions with regard to the proposed lease and the naib asked for orders. An order was passed by the proprietors on this application to the effect that, "Naib will do the needful". This was followed later by a formal letter from the proprietors to the naib definitely accepting the offer and telling him to issue a

* Appeal from Appellate Decree no. 1372 of 1922 from a decision of Pandit Ram Chandra Chaudhuri, Subordinate Judge of Bhagalpur, dated the 15th July, 1922, reversing a decision of B. Radha Krishna Prasad, Munsif of Bhagalpur, dated the 22nd April, 1921.

parwana to the new lessees. In pursuance of this order a parwana was issued by the naib and the lessees were put into possession.

The parwana, however, was not registered. In a suit by the plaintiff-proprietor for a declaration that the defendant-lessees had not acquired any right under the lease on the ground that the document on which the defendants based their title, viz., the parwana, had not been registered under section 17, Registration Act, and, therefore, was inadmissible in evidence under section 49, *held*, that the transaction had been completed by part-performance, viz., the induction of the lessees into actual possession and that therefore the plaintiff's suit must fail.

Sanjib Chandra Sanyal v. *Santosh Chandra Lahiri* (1), *Muhomed Musa* v. *Aghore Kumar Ganguli*(2) and *Nilkanth Bhimaji* v. *Hanmanji Eknath*(3), referred to.

Appeal by the plaintiffs.

The facts of the case material to this report were as follows :—

The appellants were the plaintiffs in an action which they brought against a number of defendants for a declaration of their (the plaintiffs') right, title and interest to the extent of two-thirds share in a mahal called Aratghat; they also applied for recovery of khas possession to the extent of their share and they asked for an adjudication that the defendants first party were trespassers and had acquired no title as lessees to the ghat by virtue of any valid settlement made to them on behalf of the plaintiffs. The plaintiffs were the owners of two-thirds share in the mahal: the principal value of the mahal appeared to have laid in the fact that there was a ferry and that tolls were levied and collected at the ghat. It was the usual practice to let out the ghat to a lessee but it was said that sometimes the proprietors kept it in their own hands. The defendant second party was, until some time in 1918, the naib or manager of this

(1) (1921-22) 26 Cal. W. N. 329.
(2) (1915) I. L. R. 42 Cal. 801; L. R. 42 I. A. 1.
(3) (1920) I. L. R. 44 Bom. 881.

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property on behalf of the plaintiffs or some of them. In 1917, the defendant second party, whilst in the plaintiffs' employment, made a proposal to the plaintiffs with regard to the future letting out of the ghat; a written application or proposal appeared to have been made by the naib to the proprietors saying that he had the opportunity of effecting a lucrative lease with some persons whom he knew were anxious to acquire the rights in the ghat. The proposal contained the suggestion that these applicants would give Rs. 200 annually (which was considerably more than what up to that time had been paid) and the lease should be for five years. The naib asked for instructions and orders. This appeared to have taken place on the 15th July, 1917. On the 31st July of that year an order was passed by the proprietors in connection with this application; it was to the effect.

"Naib will do the needful."

This was followed later by a formal letter from the proprietors to the naib definitely accepting the offer and telling him to issue a parwana to the new lessees. On the 1st October, 1917, it seemed that the naib did give a hukumnama or parwana to the new lessees.

The Munsif found all these circumstances as facts. He found definitely that all these transactions had taken place. He found that the lessees had actually been put into possession; he found that a quarrel had arisen between the plaintiffs and their naib and that they had alleged that he had fraudulently granted this lease without their assent. This, however, he did not believe and it appeared that he would have given judgment for the defendants had it not been that he was led to form an opinion upon a point of law which was the only point seriously argued in this appeal. This point was that the defendants relied upon the parwana. It was urged before the Munsif that the lease or parwana must be registered as it purported to be a lease of immoveable property granted for five

years and that, as it was not registered, it was impossible for it to be referred to or looked at by the Court and that in consequence the defendants were unable to prove that they had got any title. The Munsif remarking that he could not see his way to invoke any equity in favour of the defendants held that there could have been no valid settlement by lease and in consequence he decided in favour of the plaintiffs and ordered that their suit be decreed with costs.

This decision of the Munsif of Bhagalpur, which was dated the 22nd April, 1921, was the subject of an appeal to the Subordinate Judge of that place who by his judgment of the 15th July, 1922, affirmed in every respect save one, the decision to which the Munsif came. He, however, was of the opinion that it was not impossible to invoke equity in favour of the defendants and he came to the conclusion that it was necessary and proper to do so. In consequence, he reversed the judgment of the Munsif; he allowed the appeal and ordered that the plaintiff's suit be dismissed.

S. K. Milter, for the appellants.

C. M. Agarwala (for *S. N. Sahay*), for the respondents.

BUCKNILL, J. (after stating the facts as set out above, proceeded as follows): It has been argued very strenuously by the learned Counsel who has appeared for the appellants that it is impossible to invoke equity in favour of the defendant. He bases his argument upon section 49 of the Indian Registration Act. This section reads:

> "No document required by section 17 to be registered, shall
>
> (*a*) affect any immoveable property comprised therein, or
>
> (*b*) be received as evidence of any transaction affecting such property or conferring such power,
>
> unless it has been registered."

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Now, it is admitted here that this lease for five years ought to have been registered. The learned Counsel has suggested that as under the provisions of section 49, sub-section (*c*), a document required to be registered shall not, unless registered, be received as evidence of any transaction affecting such property or conferring such power, this hukumnama could not be looked at hat all by the Court nor could any equity be utilized as arising from it in favour of the defendant. He refers in this connection to *Sanjib Chandra Sanyal* v. *Santosh Chandra Lahiri*(1). The learned Judge (Rankin, J.), who decided that case held that he could not permit a document which was not registered but which ought to have been registered to be received in evidence as evidential of the title of a plaintiff who was seeking to enforce his rights under that unregistered document. On the other hand, however, a case of equal importance [*Mahomed Musa* v. *Aghore Kumar Ganguli*(2)] has been brought to our notice. That was a decision of their Lordships of the Privy Council and there it was laid down very specifically that "' when the actings and conduct of the parties are founded upon, as in the performance or part-performance of an agreement, the locus penitentiæ which exists in a situation where the parties stand upon nothing but an engagement which is not final or complete is excluded. For equity will support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon ". Now, it is of course difficult to say definitely that equity will override completely the specific provisions of sections 17 and 49 of the Indian Registration Act and in the case of *Nilkanth Bhimaji* v. *Hanmanti Eknath*(3), Heaton J., in referring to the Privy Council case which I have just mentioned, draws attention to the necessity of guarding one self in stating definitely that the decision of their Lordships was intended to affect adversely the proper

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(2) (1915) I. L. R. 42 Cal. 801; L. R. 42 I. A. 1.
(3) (1920) I. L. R. 44 Bom. 881.

construction or maintenance of those sections of the Registration Act to which reference has been made. His Lordship says:

"I feel quite certain that their Lordships of the Privy Council in giving judgment in *Mahomed Musa's* case(1) did not intend either to modify or to limit that part of the enactment of the Indian Legislature which appears as section 17 and 49 of the Indian Registration Act; nor do I believe that the Privy Council ever intended by their judgment to modify or limit that which has been enacted by the Legislature in India. So the effect of sections 17 and 49 of the Registration Act remains as totally unaffected by anything that is said in the case of *Mahomed Musa*(1).

Now in this case before us it seems to me that it can be dealt with quite unhampered by any question of admissibility of this document. Personally I think that it is admissible and that equity can be invoked from it although it should have been registered and that we could draw an equity in favour of the defendant. But even if it was not admissible there was ample material upon which a Court may come to the same conclusion to which the Subordinate Judge has come, namely, that the equity here is clearly in favour of the defendant and must be given to him in relief. What have we here in coming to the same conclusion from another point of view? We have findings of fact which show clearly that the naib, that is to say, the manager of the plaintiffs asked for their consent to grant a lease for five years at Rs. 200 per annum to the lessees. He got this permission in a very definite form from the proprietors and he actually put the lessee into possession. The terms upon which the lease was to be granted appear clearly not only in what he offered in the application for instructions which the naib made to the proprietors but in the proprietors' letter authorizing him to grant the lease. How it can be seriously suggested after that that there was not

(1) (1915) I. L. R. 42 Cal. 801; L. R. 42 I. A. 1.

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a completed transaction not only on the face of the papers themselves but by a part performance, namely, the induction of the lessees into actual possession, I cannot understand. To allow the plaintiffs to succeed against their own nominees simply because the document which was given by the plaintiffs' agent to the new lessee did not comply with the provisions of section 49 of the Registration Act, would appear to me most inequitable. In these circumstances I think that in this case the Subordinate Judge has taken the proper course. He has come to the conclusion that there was no ground for allowing the plaintiff to eject the defendants who were their own lessees. They could not take advantage of some flaw in a document, which has been produced by the defendants, in order to show that their lease did not comply with the terms of the Registration Act nor could it be allowed that the lease which the defendants possessed against their own landlord should be defeated at his application.

I think therefore that this appeal should be dismissed with costs.

MACPHERSON, J.—I agree to the order proposed. This appeal should be dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

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

1925.

June, 18.

MUSSAMMAT BIBI WAJIHUNNISSA BEGUM

v.

BABU LAL MAHTON.*

Bengal Tenancy Act, 1885 (Act VIII of 1885), sections 46 and 61—liability of raiyat to pay enhanced rent under section 46(7), when accrues—Agreement, interpretation of—bona fide deposit of a part of rent due, whether valid.

* Second Appeal no. 1070 of 1922, from a decision of Rai Bahadur Surendra Nath Mukherji, Subordinate Judge of Patna, dated the 12th June, 1922, modifying a decision of M. Amir Hamza, Munsif of Patna, dated the 31st January, 1922.