respondent, and that Párvatibái was entitled to mortgage it." So far as this can be regarded as a finding, it is incomplete, being unaccompanied by the reasons for it, as required by section 204 of the Code, and one which we do not think we ought to accept as a conclusive finding on fact. See *Raghobur Sahai* v. *Chuttraput*(1) ; *Mussamut Rajoo* v. *Rajkoomár Singh*,(2) where the findings were treated as not binding on the High Court in special appeal on similar grounds. We must, therefore, direct the Court below to find on the second issue, and transmit its finding to this Court within three months.

Order accordingly.

(1) 2 Agra, F. B., 73. (2) Calc. 7 W. R., 137.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

KRISHNARA'V YASHVANT AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* VASUDEV APA'JI GHOTIKAR, DECEASED (ORIGINAL PLAINTIFF), BY HIS HEIRS SHIVRA'M, GOVIND AND GOPA'L, RESPONDENTS.*

April 24.

Ejectment—Possession—Title—Lease—Registration.

The plaintiff, a lessee in perpetuity of a piece of land from the *inámdár* of the village in which it was situated, sued the defendant, who had dispossessed him more than six months before the date of suit, to eject him from the land. The defendant set up a lease from the same *inámdár*, but it was held to have been granted without any authority. Both the leases required to be registered under Act XX of 1866, but were not registered.

Held that the plaintiff, although suing more than six months after the date of dispossession and without resorting to a possessory suit (Act XIV of 1859, sec. 15 ; Act I of 1877, sec. 9) was entitled to rely on the possession previous to his dispossession as against a person who has no title.

Pemráj Bhavánirám v. *Náráyan Shivrám*(1) concurred in.
Dádábhái Narsidás v. *The Sub-Collector of Broach*(2) dissented from.
Wise v. *Ameerunissa Khatoon*(3) explained.

THIS was a second appeal against the decision of R. F. Mactier, Judge of Sátára, confirming the decree of the Subordinate Judge of Tásgaon.

* Second Appeal, No. 629 of 1882.

(1) I. L. R., 6 Bom., 215. (2) 7 Bom. H. C. Rep., A. C. J., 82.
(3) L. R., 7 I. A., 73.

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The plaintiff on the 1st of March, 1881, sued the defendants to recover possession of a piece of land, alleging that it had been let to him by the *inámdár* of Visápur, in which it is situated, under a perpetual lease, and that he had been in possession of the same till the revenue year 1879-80, when the defendants "began to occupy the land", and would not give it up to the plaintiff.

Three of the defendants appeared, and contended that they also had a lease of the land dated January, 1880, from the *inámdár*, whose agent had placed them in possession. The other defendants did not appear.

The Subordinate Judge decreed in the plaintiff's favour, finding that the land had been first let to him by the *inámdár* and afterwards to the defendants by his agent.

The District Judge confirmed the decree of the Subordinate Judge. In coming to this conclusion the District Judge raised the issue whether the plaintiff held the land in dispute on a valid lease from the *inámdár* or not? In determining it he found that the *inámdár* had really let the land to the plaintiff in perpetuity under a lease dated 22nd May, 1871, but not registered, as it ought to be under Act XX of 1866; that he had never dispossessed the plaintiff from it, nor had given orders to any of his agents to do so; that he had never let the land to the defendants, or authorized his agents to let it to them, or put them in possession, and that the lease, dated 22nd January, 1880, set up by the defendants, and purporting to have been signed by an agent of the *inámdár* was unauthorized and invalid for want of registration. But the District Judge was of opinion that "the case of the defendants is not made the better by the fact of the plaintiff's lease not being registered. It is clear, from the evidence of the *inámdár's* guardian himself, that the defendants never had this land let to them by the *inámdár* at all, and that the plaintiff is the real tenant of it."

The defendants appealed to the High Court.

Ganesh Rámchandra Kirloskar for the appellants.—The District Judge was in error in holding that the plaintiff could succeed on his unregistered and, therefore, invalid lease, it being absolutely inadmissible in evidence. The weakness of the defend-

ants' title in consequence of the non-registration of their lease could not give any strength to the plaintiff's case. The plaintiff must prove his title or fail—*Dádábhái Narsidás* v. *The Sub-Collector of Broach*[1]. Here on a full consideration of the question the Court held that the law in India differed in this respect from the law in England, and required that in actions of ejectment the Courts should always enforce the rule that a plaintiff must recover by the strength of his own title. Full reasons are given for this decision, which is supported by the ruling of the Privy Council in *Wise* v. *Ameerunissa Khatoon*[2]. Mr. Justice Melvill, who passed the former decision, had to reconsider it after the ruling of the Full Bench in *Pemráj Bhavániram* v. *Náráyan Shivrám*[3], in Special Appeal No. 90 of 1875; *Trimbak Atmárám* v. *Báji Yashwant*[4], which was decided so late as 4th of March, 1882. In this Mr. Justice Melvill observes: "I should have some hesitation in accepting the conclusion of the Full Bench, that every plaintiff in ejectment is entitled to recover on the strength of his previous possession, unless the defendant can prove a better title. My judgment on this point in *Dádábhái Narsidás* v. *The Sub-Collector of Broach* does not seem to have been brought to the notice of the Full Bench, nor the recent judgment of the Judicial Committee in *Wise* v. *Ameerunissa Khatoon*." The plaintiff was bound to sue within six months of his dispossession, and having failed to do so he cannot succeed unless he proves his title—Section 15 of Act XIV of 1859 and section 9 of Act I of 1877. The plaintiff in this case having failed to establish his title, the defendants, who were undoubtedly in possession at the date of the plaintiff's suit, should be allowed to retain their possession.

Yashvant Vásudev Athalye for the respondent.—We rely on our previous possession, which we say is good as against the defendants, who have no title. Possession is a good title against all persons except the rightful owner, and entitles the possessor to maintain ejectment against any other person than such owner who dispossessed him; and the rule applies when a party relying upon both title and possession fails to prove his title.

(1) 7 Bom. H. C. Rep., A. C. J., 82.
(2) L. R., 7 Ind. App., 73.
(3) I. L. R., 6 Bom., 215.
(4) Printed Judgments for 1882, p. 162.

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This was ruled by the Full Bench of this Court in *Pemráj Bhavánirám* v. *Náráyan Shivrám*[1]. The Privy Council case merely rules that the plaintiffs should have sued within six months of dispossession if they wished to rely on their previous possession. It does not go to the extent of deciding that if the possessory remedy is not resorted to, the plaintiffs would be precluded from relying on their previous possession against a person having no title. We further say that a lease in perpetuity is not a lease for a "term", and does not require to be registered under section 17 of Act XX of 1866, the Registration Act applicable to the plaintiff's lease in this case. The plaintiff, therefore, must succeed.

The judgment of the Court was delivered by

SARGENT, C. J.—In this case both the parties claim under *kowls* alleged to have been granted by the *inámdár* of the village of Visápur. The District Judge has found that the defendants' *kowl* was granted by a person who had no authority to represent the *inámdár*: he also held that the plaintiff's *kowl* was proved, but not having been registered could not be given in evidence, and concluded as follows: "Though the plaintiff's *kowl* may be, from want of registration, bad in evidence, yet, as that of defendants for the same fault is as bad, and as, moreover, it is given by one who had no authority, it is worse. The case of defendants is not made a bit the better by the fact of the plaintiff's lease not being registered. It is clear, from the evidence of the *inámdár's* guardian himself, that the defendants never had this land let to them by the *inámdár* at all, and that the plaintiff is the real tenant of it.". The District Judge confirmed the decree of the Subordinate Judge, who had found for the plaintiff with costs.

We are inclined to think the Judge was right in holding that the plaintiff's *kowl* required to be registered under Act XX of 1866, as being a lease in perpetuity, and, therefore, for a term or period exceeding one year. The appellants' contention is that the plaintiff being, consequently, unable to prove his title, he (the appellant) is entitled to retain possession. The respondent, on the other hand,

(1) I. L. R., 6 Bom., 215.

urges that, although the reason assigned by the District Judge for allowing his claim may not be satisfactory, the decision may be supported on the ground that his possession at the time when he was evicted by the appellants is good as against the latter who had no title. Assuming that plaintiff was in possession as above stated, we think that this contention must prevail. The Full Bench decision in *Pemráj Bhavánirám* v. *Náráyan Shivrám*[1] is a distinct authority that the plaintiff could maintain ejectment. The Full Bench decision of the Calcutta High Court in *Mahomed Ali Khán* v. *Khájá Abdul Gunny*[2] is to the same effect.

The appellants, however, rely on the case of *Dádábhái Narsidás* v. *The Sub-Collector of Broach*[3] and on a recent judgment of the Privy Council in *Wise* v. *Ameerunissa Khatoon*[4]. In the first of these cases Mr. Justice Melvill expressed "an opinion (for it was not necessary to the decision) that the law of India requires that in actions of ejectment we should always enforce the ordinary rule that a plaintiff must recover by the strength of his own legal title. The reason assigned is that the law of India gives to a person dispossessed of property a remedy by section 15 of Act XIV of 1859 which the law of England does not provide, and that, if he does not choose to avail himself of this remedy, he has no claim to the advantages which it would have secured him." Again he says: "I do not say that mere possession without further proof may not be sufficient to decide in plaintiff's favour; but, if he is to be allowed so to recover, it is on the ground that he has sufficient proof of title, and not on the ground that he has a right to recover without proof of title, because possession is good against all the world except the real owner." This view of the law, expressed by so able and experienced a Judge, is entitled to great weight; but, after giving it all the consideration to which it is so justly entitled, we find ourselves unable to adopt it. To us it appears that the object of that Act, as well as of section 9 of the Specific Relief Act, is to discourage people from taking the law into their own hands, however good their title may be; and, remembering

(1) I. L. R., 6 Bom., 215.
(2) I. L. R., 9 Calc., 744.
(3) 7 Bom. H. C. Rep., A. C. J., 82.
(4) L. R., 7 Ind. App., 73.

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that these Acts were drawn by English lawyers, we cannot think, in the absence of any words to show such intention, that the mere omission of the party dispossessed to avail himself of their provisions, is to be deemed as amounting to acquiescence in the act of the dispossessor so as to deprive him of his right to rely on his previous possession in an action of ejectment against a trespasser.

It has been urged, however, that the view expressed in *Dádábhái Narsidás* v. *The Sub-Collector of Broach*[1] is supported by remarks of the Privy Council in *Wise* v. *Ameerunissa Khatoon*[2]. Their Lordships say: "If the plaintiffs had wished to contend that the defendant had been wrongfully put into possession, and that the plaintiffs were entitled to recover on the strength of their previous possession without entering into the question of title at all, they ought to have brought their action within six months under section 15 of Act XIV of 1859, but they did not do so." These remarks, however, must be read in conjunction with the conclusions already arrived at by the Privy Council in the previous paragraph of the judgment, *viz*, "that the Government was entitled to take possession of the lands in question which originally formed as an island, and were at their first formation surrounded by water which was not fordable, and was entitled to oust the plaintiffs, who were trespassers, and to put defendants into possession." It thus appears that the plaintiffs in that case were evicted by persons deriving title from the real owners.

We agree, therefore, with the Calcutta Full Bench in *Ertaza Hossein* v. *Bany Mistry*[3] that the above passage in the judgment of the Privy Council is not to be understood as laying down that a plaintiff is precluded from relying on his possession against a trespasser by the circumstance of his not having availed himself of the above acts. In this present case it is denied by the defendants that they dispossessed the plaintiff, who, they alleged, had already been dispossessed by the *inámdár*. This is denied by the *inámdár*; but as there is no distinct finding on the question, we think defendants are entitled to have an issue sent down for

(1) 7 Bom. H. C. Rep., A. C. J., 82. (2) L. R., 7 Ind. App., 37.
(3) I. L. R., 9 Calc., 132.

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that purpose. We must, therefore, require the Court below to find on the following issue, and return its finding to this Court within three months :—

Was the plaintiff dispossessed of the land in question by the defendant?

Issue sent down for trial.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Nánábhái Haridás.

DEVIDA'S JAGJIVAN (ORIGINAL PLAINTIFF), APPELLANT, *v.* PIRJA'DA BEGAM, WIDOW OF MAHOMED MURTUJA (ORIGINAL DEFENDANT, RESPONDENT.*

April 17.

Sale—Confirmation of sale—Lots—Auction—Certificate of sale—Evidence—Registration—The Code of Civil Procedure, 1882, *Secs.* 59 *and* 63.

In compliance with an application for the sale of land to satisfy a decree the Civil Court put up certain land to auction in four lots. One lot was purchased by the plaintiff for Rs. 88, and each of the other three were bought by him for less than Rs. 100, the price for the whole amounting to Rs. 111-8-0, for which amount the Court granted a single certificate of sale dated 10th February, 1874. This certificate was never registered. The plaintiff applied to be put in possession; but, the defendant resisting him, his application was rejected. On the 16th of November, 1879, the plaintiff brought this suit to have his right declared to the piece bought for Rs. 88, and to recover its possession. Along with the plaint the plaintiff produced the unregistered certificate of sale of the 10th February, 1874. On the application of the plaintiff, another certificate for the same property was issued by the Court to the plaintiff on the 31st of October, 1877,—that is, three years after the confirmation of sale. This was registered on the 20th of December, 1877, and was produced by the plaintiff in the proceedings which gave rise to the present suit. It was obtained by the plaintiff on the 23rd of February, 1880, and tendered in evidence, but was rejected under section 63 of the Code of Civil Procedure (XIV of 1882).

Held that, although the four lots purchased by the plaintiff at the auction sale were included in one certificate of sale, such certificate, although one instrument in form, should, for the purpose of registration, be regarded as four separate certificates of the four several lots.

Held, also, that the registered certificate of sale, though issued three years after the confirmation of sale, was valid and admissible in evidence.

* Second Appeal, No. 67 of 1883.