

APPENDIX.

Before Mr. Justice Macpherson.

BHAIRABNATH KHETTRI v. KISHORI MOHAN SHAW.

1869
April 19.

Specific Performance—Agreement for Lease. Registration.

An agreement for a lease does not require registration.

THIS was a suit to obtain specific performance by the defendant of his agreement to execute a lease in favor of the plaintiff.

The following agreements for a lease were entered into by the plaintiff and defendant, respectively :—

This instrument of agreement is executed by Bhairabnath Khetri to the following effect :—I rent for three years your house, which is No. 92 on the Chi-pore road, and will pay rent (at the rate of) rupees 29 per month. On your getting the agreement thereof prepared by an attorney, I shall sign and execute the same : to that I shall make no objection whatever. I shall pay the rent of this house quarterly. If six months elapse, then the conditions of the agreement will not remain in force. When the attorneys prepare the agreement in due form, we both will sign, and when repairs may be properly necessary, you will make the same ; and if you do not make them, giving you notice by an attorney's letter, I shall duly make the repairs ; and if I do not pay rent after three months, then you will realize the same by an action according to law, and I will get the document registered and give it. Finis, Date the 8th of Aswin of the year 1274.

This deed of agreement is executed by Sri Kishori Mohan Shaw to the following effect :—I rent to you my house, No. 92 on the Chi-pore road, for three years, at rupees 29 a month. I will, according to custom, have the agreement prepared by a vakeel, and we will both sign it and have it signed, nor will I make any exception or objection to this. If six months elapse, the conditions of the agreement will not stand. I will take the rent from you every three months ; and if, after three months, you do not pay the rent, I will recover it according to law, you will register the agreement, which I shall have drawn up by a vakeel. I will repair the house. If I do not immediately, on receiving notice through vakeel, I will do so. To this end I have executed this deed of agreement. Finis. The year 1274, dated the 8th Aswin.

Mr. Kennedy (Mr. Ingram with him) for the defendant raised the objection that the suit could not be maintained, as the agreement, of which specific performance was sought, had not been registered.

1869
 BHAIKARNATH
 KHETTRI
 v.
 KISHORI
 MOHAN SHAW

Mr. *Branson* for the plaintiff contended that the agreement did not require registration, and referred to *Bunwaree Lal v. Sungum Lal* (1).

MACPHERSON, J.—I think the agreement does not come under section 17 of the Registration Act, as it only leads up to a lease. If I were to hold that an agreement, such as this required to be registered, I should also have to hold that an agreement to register required registration. This case is governed by the case of *Bunwaree Lal v. Sungum Lal* (1).

Attorneys for the plaintiff, Messrs *Carruthers & Co.*

Attorneys for the defendant, Messrs. *Mackertich and Ghose.*

Before Mr. Justice Phear.

1869
 May 10.

PANNA LAL AND OTHERS v. GAPIRAM BAZURIAH AND OTHERS.

Stolen Notes. Verdict of Criminal Court no evidence of ownership.

SUIT for money, concerning which the Judge in the Criminal Court had made no order.

The Defendant had been convicted by a Criminal Court on two counts; 1st.—For receiving notes knowing them to have been stolen. 2nd—For assisting in the concealment of stolen property.

The notes remained in the hands of the Police, who refused to give them up to the plaintiff, without an order of Court. The defendant also laid claim to the notes alleging that he had won them fairly by gambling.

Mr. *Branson* and Mr. *Evans* for plaintiffs.

Mr. *Pifford* for defendants.

Mr. *Branson* contended, that it would only be necessary for him to prove that the defendant had been found guilty by Criminal Court to entitle the plaintiff to an order of the Court for the money to be paid him, citing in support of his argument, Hale's Pleas of Crown, vol. 1, pp. 531 & 546; *Scattergood v. Sylvester* (2); *Easley v. Crockford* (3), also Act XXI of 1848 of the Governor-General in Council to show, that if as defendant himself stated he won the money by gambling then he was not entitled to maintain his claim in Court.

PEAR, J., held, that plaintiff must prove his claim to the Notes, to the satisfaction of the Civil Court; the verdict in the Criminal Court against the defendant not being sufficient proof of plaintiff's claim.

(1) 7 W. R., Civ. Rul., 280, (2) 15 Q. B., 56, (3) 10 Bing., 243.