

the Burmese Court, and would refuse to be sworn, even if an oath could be imposed. It appears to me that the deposition of a witness, taken on oath in a semi-barbarous country, where the penalties attaching to perjury are merely nominal, could hardly be read in evidence in a Court of Justice in the British Territories, unless by consent of parties."

1868
AGA
MOHAMMED
JAFFER
TEHRANI
v.
MURZA
NAZIRULLAH.

The judgment of the Court was delivered by

PEACOCK, C. J.—We are of opinion that the Kingdom of Ava is not the territory of a native prince or state in alliance with the British Government within the meaning of Section 177 of Act VIII. of 1859, for we are not aware of any treaty of alliance between the two Governments. The case, therefore, appears to fall within section 178, and we have directed a commission to issue under that section. If the witnesses be examined upon oath or affirmation, the evidence will be admissible without consent of parties upon proof being given in the Recorder's Court of such fact as is required by section 179 of Act VIII. of 1859 to be proved, in order to render the depositions capable of being read in evidence.

We have no power to compel the witnesses to attend before the commissioner for examination, or to take any oath or affirmation, or to give evidence. If the evidence be given on oath or affirmation, as required by the commission, the evidence will be admissible. The weight to be attached to it will be matter for the Recorder to decide.

— — — — —
Before Mr. Justice Phear and Mr. Justice Hobhouse.

RAMKUMAR MANDAL AND OTHERS (DEFENDANTS) v BRAJAHARI
MRIDHA (PLAINTIFF.)*

1868
No. 2.

Lease at Annual Rent (मन वमन)—Registration—Act XX. of 1866, s. 19, c. 4.

A lease for no definite time, but fixing an annual rent (मन वमन), falls within clause 4 of sec. 17 of Act XX. of 1866, and must be registered in order to be admissible in evidence.

See Act II
of 1877
Sec 17 (d)

This was a suit for declaration of a right of fishery in certain jalkar land, on the allegation that the plaintiff was the lessee

* Special Appeal, No. 1951 of 1868, from a decree of the Subordinate Judge of 24-Pergunnahs, affirming a decree of the Moonsiff of that District.

1868

RAMKUMAR
MANDAL
v.
BRAJAHARI
MIDHA.

thereof, under a potta from the proprietor, Panchu Lashkar; and that he had been dispossessed by the defendants.

The defendants set up in their defence that the plaintiff's lease was a collusive transaction; that he was never in the enjoyment of the right of fishery; and that the jalkar land in question was covered by their jotedari potta, dated 10th Ashar 1273 (23rd June 1866.)

The following is a translation of the potta under which the defendants claimed:

“To Ramkumar Mandal.—We execute this potta, after obtaining kabuliat of the parcels of land situate within the boundaries mentioned in the potta, at an annual rent of Rs. 16. According to the instalments hereinafter mentioned, you shall pay the rent year after year. If the rent be not paid, it will be realized according to law. Preserving the boundaries, you will cultivate the land, and enjoy and possess the same. To this intent, on receiving the kabuliat, we execute this potta. Dated 1273, 10th Ashar (23rd June 1866.)”

The Moonsiff gave a decree for the plaintiff.

On appeal, the Principal Sudder Ameen held, that defendant's potta not being a registered document, was not admissible as evidence, since it came into existence after the Registration Act came into operation. He dismissed the appeal.

The defendants appealed specially, on the ground, *inter alia*, that their potta was not of the class of documents whose registration has been made compulsory by law.

Baboos *Mahesh Chandra Bose* and *Nilmadhab Bose* for appellant.

The judgment of the Court was delivered by

PHEAR, J.—The defendant's case in this suit rested upon a title which he set up under a certain potta, which the lower Court refused to receive as evidence, on the ground that it was not registered. The term of this potta is expressed by the common form with which we are so familiar (जन दमन) *shan ba-shan*. This has been invariably interpreted by this Court to mean a year-by-year-tenancy, that is a tenancy which is certain for the period of one year, and will continue beyond that

period until it is properly put an end to by either party. We think that a potta, the term of which is defined by these words, falls within the 4th clause of section 17, Act XX. of 1866; and that it is a lease for a term exceeding one year. Therefore, by the provisions of that section, the document must be registered, otherwise, by section 49 of the same Act, it cannot be received as evidence in any Court whatever. It follows that the first objection made on special appeal to the judgment of the Court below falls to the ground. The remaining objection is one which is based upon the nature of the title of the defendant, but inasmuch as the title-deed, which is the primary evidence of that title, cannot be received, the Court would have been wrong if it had looked at secondary evidence of the same. This objection, therefore, also fails, and the special appeal must be dismissed with costs.

1863

KAMKUNAR
MANDAL
v.
BRAJAHARI
MRIDHA

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

RAJCHANDRA BOSE v. DHARMACHANDRA BOSE *

Movable Property—Jurisdiction of Small Cause Court—Act XL of 1865.

1863
Nov. 23

Huts are not "movable property" within the meaning of Act XL of 1865.

THIS was a reference by the Judge of the Small Cause Court of Jessore. In stating the case he said:

"This is a suit brought under section 245 of Act VIII. of 1859 by the plaintiff, to establish his right to the huts mentioned in the plaint, and to recover possession of the same; but there is no prayer in the alternative for the value of the same.

"Two questions, therefore, arise: *Firstly*, whether huts in this country are to be considered personal property; and, *secondly*, whether the suit, as laid in the plaint, is cognizable by a Small Cause Court.

"I think that huts should not be considered personal or movable property in this country, and that no action for the recovery of the same or its value can lie in a Small Cause Court, and that

Reference by the Judge of the Small Cause Court of Jessore.