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 ISHAK  
 v.  
 RASAMAYA  
 DHUR  
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Their Lordships cannot assent to these conclusions. They make words of more regard than things, and form more than substance. In their judgment the Calcutta High Court have in this case rightly decided that there is no substantial gift to the poor. A gift may be illusory whether from its small amount or from its uncertainty and remoteness. If a man were to settle a crore of rupees, and provide *ten for the poor*, that would be at once recognized as illusory. It is equally illusory to make a provision for the poor under which they are not entitled to receive a rupee till after the total extinction of a family; possibly not for hundreds of years; possibly not until the property had vanished away under the wasting agencies of litigation or malfeasance or misfortune; certainly not as long as there exists on the earth one of those objects whom the donors really cared to maintain in a high position. Their Lordships agree that the poor have been put into this settlement merely to give it a colour of piety, and so to legalize arrangements meant to serve for the aggrandizement of a family.

They will humbly advise Her Majesty to dismiss this appeal with costs. *Appeal dismissed*

Solicitors for the appellants: Messrs. *Pemberton & Garth*.

Solicitors for the respondents: Messrs. *Sanderson, Holland & Aldin*.

C. B.

## APPELLATE CIVIL.

*Before Mr. Justice Norris and Mr. Justice Macpherson.*

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 December 14. MAQBUL AHMED CHOWDERY (DEFENDANT) v. GIRISH CHUNDER KUNDU (PLAINTIFF).<sup>\*</sup>

*Bengal Tenancy Act (VII of 1835), section 95—Manager of estate—Obligation of manager to have his name registered before he can collect rent of estate—Land Registration Act (Bengal Act VII of 1876), section 78.*

A person who has been appointed manager of an estate under the provisions of section 95 of the Bengal Tenancy Act must have his name registered

<sup>\*</sup> Appeal from Appellate Decree No. 1790 of 1891, against the decree of F. A. Slack, Esq., District Judge of Chittagong, dated the 28th August 1891, affirming the decree of Babu Juggut Chandra Dass, Munsif of Sitakoondoo, dated the 11th July 1891.

under the provisions of section 78 of the Land Registration Act before he can recover rent from the tenants of the estate of which he has been appointed manager.

IN this case the plaintiff, Girish Chunder Kundu, was a person who, owing to disputes amongst the co-owners, had been appointed by the Civil Court under section 95 of the Bengal Tenancy Act to manage the estate of Ashanulla Chowdhry, Rabimulla Chowdhry, Bashirulla Chowdhry, and Rabatunessa Chowdhry, the last two being the names of deceased persons. The plaintiff sued for rent due to the estate; he sued first as manager on behalf of Ashanulla, Rabimulla and Bashirulla; but, subsequently, on his petition, the name of Rabatunessa was added; and, finally, also on his petition, the names of Bashirulla and Rabatunessa were struck out. The estate in respect of which the rent was claimed was a *taluk* held by the defendants under a *taraf* which stood in the Collector's register in the names of Asbanulla and Rahimulla Chowdhry only. The only issue material to this report was whether the plaintiff could sue for rent without having got his name registered as manager on the Collectorate register. The Munsif, holding that the registration of the name of the manager was not necessary, gave the plaintiff a decree.

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The Judge, on appeal by the defendant, said :—

“With regard to this point, I am of opinion that the provisions of sections 38 and 78 of the Land Registration Act will not apply in the present case, because the definition of the word ‘manager,’ as given in that Act, does not include the case of the present appointment, because ‘manager’ in that Act means every person who is appointed to manage any estate on behalf of a minor, idiot or lunatic, or on behalf of religious or charitable foundation, and the defendant’s pleader does not try to show or urge that any of the co-owners falls within the above category, or that the management is on behalf of a religious or charitable foundation. This being so, it does not appear to me that the present appeal can be decreed in favour of the defendant on the ground that the provisions of the Land Registration Act have not been complied with. I, therefore, decide this point against the defendant.”

The Judge, therefore, dismissed the appeal.

The defendant appealed to the High Court.

Babu Akhil Chunder Sen for the appellant.

Babu Hem Chunder Banerjee for the respondent.

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The judgment of the Court (NORRIS and MACPHERSON, JJ.) was as follows :—

The question that we are called upon to decide in this case is whether a person who has been appointed the manager of an estate under the provisions of section 95 of the Bengal Tenancy Act must have his name registered under the provisions of section 78 of the Land Registration Act before he can recover rent due from tenants of the estate of which he has been appointed manager.

Section 78 of the Land Registration Act says : "No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act." . . . . In order to see who is required by this Act to cause his name to be registered within the meaning of section 78, we must go back to sections 38, 39, 40, 41, and 42, and the material section we have to consider is section 42, which deals with managers who are appointed after the Land Registration Act came into force. Paragraph 3 of that section says : "Every person assuming charge after such commencement (that is, the commencement of the Act) of any estate or revenue-free property, or of any interest therein, respectively, as manager, shall, within six months from the date of such assumption of charge, make application in the manner hereinafter provided to the Collector of the district on the general register of which such estate or property is borne, or to any other officer who may have been empowered by such Collector to receive such applications, for registration of his name and of the character and extent of his interest as such proprietor or manager." This refers to every manager. Now 'manager' is defined by clause 6, section 3 of the Act. That clause says : "'Manager' means every person who is appointed by the Collector, the Court of Wards, or by any Civil or Criminal Court to manage any estate or revenue-free property, or any part thereof, and every person who is in charge of an estate or revenue-free property, or any part thereof on behalf of a minor, lunatic, or on behalf of a religious or charitable foundation." The Officiating District Judge was of opinion that the word 'manager' in this section meant only persons appointed to manage any estate,

&c., on behalf of a minor, idiot or lunatic, or on behalf of a religious or charitable foundation ; in other words, he considered the word 'and' after the verb to be conjunctive and not disjunctive. That seems to us to be an erroneous interpretation of the section. The section seems to us to point to two classes of people : first of all to 'persons who are appointed by the Collector, the Court of Wards, or by any Civil or Criminal Court to manage any estate or revenue-free property, or any part thereof ;' and, secondly, to 'persons who are in charge of estates or revenue-free property or any part thereof, on behalf of a minor, idiot or lunatic, or on behalf of a religious or charitable foundation.' And that that is so appears from the fact that when the Land Registration Act was passed, Regulation V of 1812 was in force, and section 26 of that Regulation provided for the appointment by *Zillah* or City Judges of a person to manage an estate where there were disputes between the proprietors ; and the person so appointed, amongst others, is the person included in the first-half of the definition of manager in clause 6 of section 3 of the Land Registration Act.

The question is whether the 'manager' spoken of in section 95 of the Bengal Tenancy Act who has to be appointed by the District Judge is in any different position from other managers. Now the 'manager' spoken of in the Land Registration Act is one to be appointed by the Civil Court amongst others. The District Judge appears to us to be entirely on the same footing as the Civil Court in the Land Registration Act. We would further point out that clause 3, section 98 of the Bengal Tenancy Act, provides that a manager shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might, but for his appointment, have exercised, and the co-owners shall not exercise any such power. It is clear that the collection of rent is part and parcel of the management of an estate, and it is so recognised in Regulation V of 1812. Section 26 of that Regulation, speaking of the things which comprise the management of an estate, says that one of them is to collect the rents. The collection of the rents is a material part of the management of an estate. When a manager is appointed, co-owners, even though their names are registered, cannot collect the rents, and unless a

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manager is registered, there is no person to whom the tenants are liable to pay their rents.

In this view of the law, it appears to us that the decisions of both the lower Courts are erroneous, and must be set aside, and this suit dismissed with costs in all the Courts.

J. v. W.

*Appeal allowed.*


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## APPELLATE CRIMINAL.

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*Before Mr. Justice Norris and Mr. Justice Beverley.*

TORAP ALI AND ANOTHER v. QUEEN-EMPRESS.\*

1895

June 3.

*Penal Code (Act XLV of 1860), section 201—Causing disappearance of evidence of supposed murder—Want of proof of commission of offence.*

Section 201 of the Penal Code applies merely to the person who screens the principal or actual offender and not to the principal or actual offender himself.

The accused were charged with murder, and also with causing the disappearance of the corpse of the deceased with the intention of screening the murderer from punishment under section 201 of the Penal Code. The evidence for the prosecution pointed conclusively to one or other of them being the actual murderer; but it was impossible upon the evidence to say which of them caused the death. They were acquitted on the charge of murder, but convicted on the charge under section 201. *Held* that the conviction could not stand.

THE appellants were charged with murder and also with the offence under section 201 of the Penal Code. They were acquitted of murder, as there was no evidence to show which of the accused committed the murder, but were convicted on the charge under section 201 of the Penal Code. They appealed against the order of conviction.

Babu *Chandra Kanto Sen* appeared on behalf of the appellants. The *Deputy Legal Remembrancer* (Mr. *Kilby*) on behalf of the Crown.

Babu *Chandra Kanto Sen*.—There is no evidence that the deceased was murdered. All that has been proved by the medical

\* Criminal Appeal No. 909 of 1894 against the Order of A. E. Staley, Esq., Sessions Judge of Backergunge, dated the 22nd of November 1894.