

ORIGINAL CIVIL.

Before Mr. Justice Trendelen.

A. C. BOYD (PLAINTIFF) v. A. KREIG (DEFENDANT).*

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Mar. 3 & 5. *Registration Act (LII of 1877), Section 17, Clause (d)—Lease for one year—Lease exceeding one year—Option of renewal—Correspondence, when stamping necessary—Stamping correspondence containing agreement to lease.*

A lease for one year, containing an option of renewal for a further period of one year, is not a lease for a term exceeding one year within the meaning of clause (d), section 17 of the Registration Act, so as to render registration thereof compulsory.

Certain correspondence passed between the plaintiff and the defendant relating to a lease of a flat in premises in occupation of the plaintiff, which admittedly contained an agreement for a lease for one year with an option of renewal for another year. The terms in which the option was given were as follows:—The defendant in one letter wrote:—"So I expect you will give me the option of renewal for another year, respectively five months, on same terms." To which the plaintiff replied—"You may have the option of retaining it (the flat) for another year on the same terms, but not for a shorter period." In pursuance of an arrangement the defendant had a draft lease prepared embodying the terms agreed on, which he sent to the plaintiff for approval, and which was in due course returned by him "approved." The defendant then had the lease engrossed and properly stamped, but the plaintiff eventually refused to execute it, and it was never signed by the defendant. The option of renewal was given in the unexecuted lease in the following terms:—"Also with option to renew for another twelve months certain."

The defendant having entered into possession and disputes having arisen, the plaintiff gave him notice to quit and sued to eject him, alleging that at the most he was a mere monthly tenant. The defendant pleaded that under the lease he was entitled to hold for a year. The year expired before the suit came on to be heard, and the defendant not having exercised the option to renew, vacated the premises. At the hearing the defendant in support of his case tendered the correspondence and the stamped unexecuted lease. It was objected that the correspondence was inadmissible in evidence—

- (1) because the option to renew made the period for which the lease was to run exceed one year, and therefore rendered registration compulsory;
- (2) because the correspondence was unstamped.

* Original Civil suit No. 338 of 1890.

On behalf of the defendant it was urged that registration was unnecessary, as the option did not make the lease one for a longer period than one year, and that the stamped unexecuted lease must be treated as part of the correspondence, and as it was properly stamped, no further stamping was required.

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Held, following *Hand v. Hall* (1), that the existence of the option did not create a lease for a term exceeding one year within the meaning of clause (d), section 17 of the Registration Act, and that consequently the correspondence did not require registration.

Held further, that as the correspondence contained a complete agreement independently of the draft and engrossed lease, the latter could not be treated as part of the correspondence, and that consequently the correspondence must be stamped and the penalty paid before it could be admitted in evidence.

Bhobani Mahto v. Shihbath Para (2) dissented from.

THE plaintiff instituted this suit to eject the defendant from the top flat of the premises No. 3, Middleton Row, and to recover such sum as the Court might think fit to allow for the use and occupation of the flat from the 1st July 1889 up to the date of recovery of possession. The plaintiff, who was the lessee of the premises, alleged that he had permitted the defendant to use and occupy the top flat from the 1st November 1888 at a monthly rent of Rs. 130, and that on the 30th May 1889 he gave the defendant notice to quit and deliver up possession on the 30th June, but that the defendant had failed to do so. This notice to quit treated the defendant as a monthly tenant. The defendant in his written statement denied that he was a monthly tenant, and alleged that the plaintiff had let him the flat for one year certain from the 1st November 1888 at a monthly rent of Rs. 130; that being under the impression that the lease was valid and binding on the plaintiff he had gone to some expense in repairing the flat; that he had paid the rent up to the month of June 1889, and tendered the rent for July which the plaintiff had refused to accept. He therefore contended that he was entitled to remain in possession till the end of October. Previous to the case coming on for hearing, the defendant on the 31st October gave up possession of the flat, and it was admitted at the hearing that there must be a decree for Rs. 520, being Rs. 130 a month for the period from July to October. The only question

(1) L. R., 2 Ex. D., 365.

(2) I. L. R., 13 Calc. 113.

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remaining to be decided in the case therefore was one of costs, and that turned upon the question whether the defendant had a lease for a year or not.

It appeared, on the admitted facts in the case, that in the month of October 1888 certain correspondence took place between the parties with reference to the demise of the flat, the material portion of which was as follows:—On the 21st October 1888, the defendant wrote to the plaintiff as follows:—

“I beg to inform you that I accept your firm offer of the third floor of No. 3, Middleton Row, together with three horse stalls * * * * from the first of next month (1st November) at Rs. 130 per month for twelve months, with option for me to terminate the arrangement after five months on payment of Rs. 100. I believe you told me you had the house for two years, so I expect you will give me the option of renewal for another year, respectively five months, on same terms. * * * I shall have the usual agreement written out on stamped paper, copy of which I shall send you first for approval. Meanwhile please confirm the above * * .”

On the 22nd October the plaintiff replied as follows:—“I agree to let you the third flat of No. 3, Middleton Row, with the out-offices named by you, from the 1st November next, on the terms stated in your letter of yesterday’s date with one exception, *viz.*, that if you continue occupancy of the house for one year, you may have the option of retaining it for another year on the same terms, but not for a shorter period * * * .”

On the same day the defendant replied as follows:—

“As arranged, I beg to send you herewith the usual draft agreement. The clause about the second five months to which you objected has been left out. Can you tell me what stamp is required * * * .”

On the same day the plaintiff wrote informing the defendant that he could not say what value of stamp was required, and he subsequently returned the draft agreement with a pencil note signed, intimating his approval thereof. Subsequently the defendant had the agreement engrossed and stamped with a 10-rupee stamp and sent it to the plaintiff for his signature. The plaintiff subsequently returned it to the defendant unsigned, after the defendant had entered into possession of the flat.

The material portion of the agreement was as follows:—"I hereby agree and engage to rent of you the third floor of No. 3, Middleton Row, together with three horse stalls * * * for twelve months from the first of this month (1st November 1888) at Rs. 130 free of all taxes existing and forthcoming, payable monthly on the first day of every month * * * with option for me to terminate the arrangement after five months, subject to 15 days' notice on payment of Rs. 100, also with option to renew for another twelve months certain from the 1st November 1889 up to 31st October 1890 * * *."

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Mr. *Graham* for the plaintiff.

Mr. *M. P. Gasper* and Mr. *Leith* for the defendant.

Upon the case being called on, *TREVELYAN, J.*, intimated that on the admitted facts the case reduced itself to a question of costs, and that the onus was on the defendant.

Mr. *Gasper* submitted not, as the plaintiff's case was that the defendant was either merely allowed to reside in the flat as alleged in the plaint, or a monthly tenant as stated in the notice to quit, neither of which propositions he admitted.

TREVELYAN, J., referred to section 106 of the Transfer of Property Act, and stated that he must presume the tenancy to be from month to month, and that, as the defendant set up a lease for a year, it was for him to prove his case, so he must begin.

Mr. *Gasper* then proceeded to open the case, and whilst referring to the letters above set out, Mr. *Graham* stated that he admitted the letters, but objected to their being admitted in evidence, on the ground that they contained an agreement which required to be stamped, and they were not stamped.

Mr. *Gasper* contended that the correspondence did not require stamping, as it ended in the agreement or lease which was properly stamped with a 10-rupee stamp, and which must be taken as part of the correspondence. All through the correspondence the agreement was referred to, and it must be treated as part of the correspondence, and if any portion of the correspondence was stamped, it would be sufficient. No further stamp was required.

[*TREVELYAN, J.*,—How do you show that the agreement which bears a stamp, but is not signed by either party, is the contract?]

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Mr. *Gasper*.—I submit it must be treated as part of the correspondence which evidences the contract, but, if necessary, I am quite prepared to pay the stamp required now and the penalty.

Mr. *Graham* then objected that the correspondence could not be put in evidence, as it disclosed an agreement for a term of more than a year by reason of its being for a term of one year with an option of renewal for a further period of a year, and consequently required to be registered, and referred to section 107 of the Transfer of Property Act and section 17 of the Registration Act.

Mr. *Gasper*.—The correspondence does not require registration. A lease for one year with an option of renewal for a further period is not a lease for a term exceeding a year.

It has been held so in this country as well as in England—see *Apa Budgawda v. Narhari Annajee* (1), *Mohunto Southo Pursad Dass v. Parasu Pathan* (2), *Hand v. Hall* (3). The option of renewal, to use the words of Lord Cairns, C., must be exercised by the defendant before it can be said any interest has passed to him, and until the option is exercised it is impossible to tell whether a tenancy for more than a year is to come into force or not. This agreement is divisible into two parts. In the first place it operates as a lease for a year, and secondly, it gives the tenant the right at the end of that year on proper notice of demanding a renewal of the lease for another year. This case is therefore precisely similar to the case of *Hand v. Hall*.

Mr. *Graham*.—The case of *Hand v. Hall* differs from the present, as in that case the tenant was required to do something before the lease was renewed, *vis.*, to give a month's notice. Here there is nothing of the kind, but merely an option to renew; that is to say, he has only to remain in possession, and do nothing.

[TREVELYAN, J.,—But he must “renew.”]

Mr. *Graham*.—If the meaning of “renewing” is to be taken as doing something before he acquires the interest, I must admit that *Hand v. Hall* is an authority against me, but it has not been followed in this Court.

[TREVELYAN, J.,—The Madras High Court has approved it.]

(1) I. L. R., 3 Bom., 21.

(2) 26 W. R., 98.

(3) L. R., 2 Ex. D., 355.

Mr. Graham.—*Bhobani Mahto v. Shibnath Para* (1) decided in 1886 is an authority in my favour—see also *Ram Kumar Mandal v. Brajahari Mridha* (2). *Kisto Kulee Moonshee v. Agemona Bewa* (3) is also in my favour.

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As to the question of the correspondence requiring to be stamped, there is nothing to connect the stamped agreement with it, and the correspondence contains a complete agreement in itself. I submit it must therefore be stamped before it can be admitted in evidence.

Mr. Gasper in reply.—*Kisto Kulee Moonshee v. Agemona Bewa* (3) is so badly reported as to be worthless, as it cannot even be gathered from the report what the document was, nor does it appear what was even decided. The case of *Bhobani Mahto v. Shibnath Para* (1) is in the same condition, no cases being referred to or arguments given, and it does not appear if the attention of the Court was drawn to *Hand v. Hall* (4). Besides, that case refers to a *suri-i-peshgi* lease which is a mortgage. This case is even stronger than *Hand v. Hall*, as here there is an option “to renew,” the plain meaning of which is to the right to demand a fresh lease, whereas in *Hand v. Hall* the tenant had merely the right at the end of the term, on giving a month’s previous notice, “to remain on for three years and a half more.”

The following was the judgment of the Court delivered on March 5th:—

TREVELYAN, J.,—The only questions argued before me and which I have to decide in this case are whether the documents which create the tenancy of the defendant are admissible in evidence. It is conceded that if they are admitted in evidence there must be a decree for the defendant except as I shall mention hereafter, and that if they are not so admitted the plaintiff must succeed. The contention between the parties is as to the payment of the costs. The plaintiff is entitled to a decree for Rs. 520, the rent for the months of July, August, September, and October 1889.

The rent for July was offered to him, but he refused to accept it, so that the tender of the rent for the subsequent months would have been an empty form, and as the rent for these months

(1) I. L. R., 13 Calc., 113.

(3) 15 W. R., 170.

(2) 2 B. L. R., A. C., 75.

(4) L. R., 2, Ex. D., 355.

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accrued due after the suit was brought, the tender or non-tender of the rent could not affect the costs of the suit.

The defendant has vacated the premises since the suit was brought.

The admissibility of the documents depends in the first place upon whether they require registration, and in the second place upon whether the lease which was tendered for execution and was properly stamped can be treated as a part of the correspondence which created the tenancy.

As to the registration, a series of cases shows that where correspondence constitutes a contract leasing premises for more than a year, that correspondence must be registered, although a formal document may be contemplated. There is no doubt that by the correspondence in this case the plaintiff leased, and the defendant accepted the lease of, the premises.

The lease was for a year, but it was provided that the tenant should have the option of renewal for a second year.

I have to decide whether the existence of this option creates a lease for a term exceeding one year within the meaning of section 17, clause (d) of the Registration Act (III of 1877).

After careful consideration I have come to the conclusion that the documents do not require registration. A number of cases have been cited and have been referred to by me.

Of the cases which are in point the result is that on the one hand we have decisions of the Bombay, Madras, and Allahabad High Courts accepting as applicable to the determination of this question the decision of the Court of Appeal in England in *Hand v. Hall* (1). On the other hand, there are some decisions of Division Benches of this Court on appeals from the mofussil, the last of which, *Bhobani Mahto v. Shibnath Pura* (2), is in point. The value of the report of that case and of the other cases of this Court which have been cited is much diminished by the absence of notes of the argument or of the cases cited. In determining whether I ought to act upon this decision, it is all important to know whether the case of *Hand v. Hall* was cited to the learned Judges who tried the case in this Court. The report is silent, and both the Judges have since left this Court, so I have no means of

(1) L. R., 2 Ex. D., 355.

(2) I. L. R., 13 Cal., 113.

referring to them as to that fact. I think it is pretty clear that *Hand v. Hall* was not cited. It is so much in point that if it had been the learned Judges of this Court would probably have distinguished it in their judgment.

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In *Hand v. Hall* the question was, it is true, as to the construction of English statutes, but the question there was, as the question is here, whether a lease giving an option to renew was a lease for more than the original term of the demise.

The reasoning in *Hand v. Hall* seems to apply equally here.

Lord Cairns there says :—“The document we have to construe in this case runs thus :—‘Hand agrees to let, and Hall agrees to take, the large room on the south end of the Exchange, Wolverhampton, from the 14th February next until the following midsummer twelve months.’ Stopping there, there can be no doubt that those words are words of present demise, and if the document had contained those words only, the defendant would have become tenant from the 14th of February to the following midsummer twelve months. The document, however, goes on :—‘With right at the end of that term for the tenant, by a previous month’s notice, to remain on for three years and a half more.’ By this latter part of the agreement an option is given to the defendant, and must be exercised by him before it can be said that any interest has passed to him. It is a stipulation that at his option, on a notice given to the plaintiff, he shall not be disturbed for three years and a half. Whereas there is *not* anything to be done by the tenant in the first part of the agreement to create a demise, in the second part something has to be done by him before that part takes effect, and until that is done it is impossible to tell whether a tenancy shall come into force or not. I think, therefore, that it is absolutely necessary to divide the contract into two parts. I think the agreement is an actual demise, with a stipulation superadded that if at his option the tenant gives the landlord a notice of his intention to remain, he shall have a renewal of his tenancy for three years and a half.”

On the same reasoning there is in this case merely a demise for a year.

I am justified in my view that the reasoning in *Hand v. Hall* applies to the construction of the Registration Act by the decision of

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the Bombay High Court in *Apu Budgyavda v. Narhari Annajee* (1), by the decision of the Allahabad High Court in *Khayali v. Husain Baksh* (2), and by the decision of the Madras High Court in *Virammal v. Kasturi Rungayyengar* (3). Speaking with every respect of the decision of this Court to which I have referred, I think I should apply the reasoning of *Hand v. Hall* to the construction of the Registration Act. I have no doubt that if *Hand v. Hall* and the decisions to which I have referred had been cited to the Judges of this Court, they would have come to a different conclusion.

I hold that the documents in question do not require registration.

There can, I think, be no doubt that the correspondence required stamping. It was complete in itself before the lease was tendered for execution. It is only on the ground that it was so complete that the defendant can succeed. If I were to accede to Mr. Gasper's argument, I should have to hold that the revenue law could be evaded by stamping a subsequent letter after the contract had been completed.

If the penalty (Rs. 110) is paid, the documents tendered can be marked as exhibits. [The penalty was here paid.]

The penalty having been paid, the documents may be admitted in evidence, and there will be a decree for the plaintiff for Rs. 520. In other respects the suit is dismissed.

The plaintiff must pay the defendant's costs on scale No. 2.

Attorneys for plaintiff: Messrs. *Bonnerjee & Chatterjee*.

Attorney for defendant: *Baboo Gonesh Chunder Chunder*.

H. T. H.

(1) I. L. R., 3 Bom., 21.

(2) I. L. R., 8 All., 198.

(3) I. L. R., 4 Mad., 381.