1896

HURRI BHUSAN MUKERJI v. UPENDRA LAL MUKERJI.

By Article 93 a suit to declare the forgery of an instrument attempted to be enforced against the plaintiff must be dismissed if brought after three years from the date of the attempt. It is contended that the adoption of 1884 was such an attempt. It is, however, as the Subordinate Judge points out, very difficult to say that an adoption followed by nothing more is in any sense an enforcement of the power against other persons. Their Lordships are clear that it is not so within this Article. If it were, Article 118 would have no force in cases where the plaintiff impugns an adoption, on the ground that the power alleged for it is not genuine. They hold that this case is described by Article 118 alone, and therefore the suit is brought in good time.

They will humbly advise Her Majesty to dismiss the appeal and the appellant must pay the costs incurred in this appeal of the respondents who have appeared.

Appeal dismissed.

Solicitors for the appellants: Messrs. *Barrow & Rogers.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

P. C. 1896 *May* 14 & 15 *June* 27.

GRENON AND OTHERS (PLAINTIFFS) *v.* LACHMI NARAIN AUGURWALA AND OTHERS (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

Contract—Sale of goods—Brokers' bought and sold notes—Special place of delivery "to be mentioned hereafter"—Disclosure of principal—Assessment of damages—Contract Act (IX of 1872), sections 49, 94, 231—Damages.

Bought and sold notes of Purneah indigo seed provided: "The seed to be delivered at any place in Bengal in March and April 1891." It was added, "the place of delivery to be mentioned hereafter." The buyer made mention of this on the 20th March 1891 in a letter to the broker for both parties. This letter, specifying Howrah Railway station as the place, was forwarded to the vendor, who replied that he would deliver at his own godowns at Sulkea. This the buyer declined. The vendor and the buyer each insisting that the place named by him was the proper one for delivery, the buyer refused to accept at the vendor's godowns, or at any place other than Howrah station.

* *Present*: LORDS HOBHOUSE, MACNAGHTEN, and MORRIS, LORD JAMES OF HEREFORD and SIR R. COUCH.

1896

GRENON v. LACHMI NARAIN AUGURWALA.

The vendor remained for a certain time ready and willing to deliver at his godowns at Sulkea; and the buyer not accepting delivery at that place, the vendor declared the contract cancelled. The buyer then sued him for breach of the contract to deliver at the place mentioned by the buyer. On the question whether the vendor had discharged his liability by readiness and willingness to deliver at his own godowns at Sulkea,—

Held, that the choice of place given originally by the contract to the buyer, subject only to the express contract that it must be in Bengal, and to the implied one that it must be reasonable, had not been converted, by the words about "mention" thereafter, into a deferred question to be settled by a subsequent agreement. The buyer, according to the contract already subsisting, had the right to fix the place. There was a special promise in the contract as to the delivery, and to complete its terms nothing more was required than a mention by the buyer of a reasonable place within Bengal. This had been made by him. The contract therefore did not fall within section 94 of the Indian Contract Act (IX of 1872) dealing with cases where there has been no special promise as to delivery, and fixing the place of production as the place for delivery; but rather resembled what was contemplated in section 49. And the buyer was entitled to damages on the contract.

APPEAL from a decree (3rd March 1893) of the High Court, reversing a decree (8th August 1892) of the High Court in its original jurisdiction, and dismissing the suit with costs.

This suit was brought on the 27th May 1891 for Rs. 13,000 damages for a breach of contract entered into by the defendants, through Messrs. Robert Thomas and Co., brokers for both parties, with the plaintiff, Henry Nicholas Grenon, on the 27th October 1890, for the delivery, during March and April 1891, of 2,000 maunds of Purneah indigo seed at Rs. 8-8 a maund.

The principal question raised on this appeal related to the place of delivery; the plaintiffs having required delivery at the Howrah Railway station, and the defendants having declined to give delivery there, but having been ready and willing to deliver at their own godowns at Sulkea.

The facts on which that question turned, with the bought and sold notes and subsequent letters between the parties, are stated in their Lordships' judgment.

The plaint having stated a variation of the contract by the buyer agreeing with the seller to accept the whole amount of seed on the 30th April, averred that the buyer also intimated to the seller that he was willing, if by "their godowns" the sellers

1896

GRENON v. LACHMI NARAIN AUGURWALA.

meant their godowns at Pertabgunj, to take delivery in Purneah, provided that the Railway charges to Howrah should be deducted from the contract price. But if the defendants meant otherwise, then the plaintiff signified his adherence to his former notice, and must require delivery at the Howrah Station. By the defendants not delivering at the latter place, the plaintiff was put to loss, which he estimated at Rs. 13,000.

The defendants by their written answer alleged that Grenon as the principal was for the first time disclosed to them on the 21st March 1891, and that they had declined to recognize him as the principal, but had expressed their willingness to give delivery to Messrs. Thomas and Co., the broker, from their godowns at Sulkea. They further alleged that both the broker, and Grenon at one time, had agreed to the latter being the place.

The record did not show that any issues had been formally recorded as fixed by the Court, but the main questions raised at the first hearing were these: Whether the defendants did enter into a contract with the plaintiff for delivery of the seed, and whether they had not discharged themselves by being prepared on the 30th April to give delivery to the plaintiff at their Sulkea godowns.

It appearing at the hearing that Grenon had been buying the seed to supply a Calcutta firm of Sewdial Surjmull, the partners in the latter were joined as co-plaintiffs with him. The Judge in the original jurisdiction (HILL, J.) first disposed of an objection taken by the defendants in reference to section 231, Indian Contract Act, 1873, as follows:—

"The defendants place reliance on section 231, asserting the right to repudiate the undisclosed principal at any time before completion of the contract; and that as the time for fulfilment did not arrive till the 30th April, they contend that they had up to that date to repudiate him. It appears to me that to place such a construction on that section would lead to very grave inconvenience and perhaps injustice, and I do not think that I ought to place such a construction upon it. It is a question whether the second clause of that section must not be taken as relating to the circumstance to which the earlier clause relates, that is to say 'where a person making contract neither knows, nor has reason to suspect, that the person he is contracting with is an agent,' and it was argued that the defendants could not bring themselves within that, because in the contract itself Messrs. Thomas & Co. expressly contract on behalf of their principals, and it is further contended that it was not open

to the defendants after the contract was concluded to repudiate the principal as soon as he was disclosed. The question is a somewhat difficult one, and one which I do not wish to decide unless it is necessary ; but it seems to me that looking at the section and assuming that the defendants might have availed themselves of the provisions of the second clause that under the circumstances they deprived themselves of the right to do so long before the time arrived." (1)

The next question upon which decision was given was whether or not Grenon had assented to taking delivery at the Sulkea godowns. The judgment, as to this question of fact, set forth some letters between the broker and Grenon, and the material part, for the purposes of this report, was as follows :—

" There appears to have been some vagueness as to the term 'Howrah,' as it appears to be large enough to include Sulkea, and it may be that Grenon conveyed to Thomas the impression, in mentioning Howrah, that he meant to include Sulkea. But had I to determine between the two, I confess that, although I should feel some difficulty, the tendency of my opinion, having regard to Grenon's persistence as to Howrah, would be in favour of the view that he had not given his assent to the alteration, and that Thomas was mistaken ; and this is confirmed by what transpired afterwards. The following day Thomas & Co. wrote to Grenon enclosing a delivery order in his favour for the seed, and informing him that delivery was to be taken by him from the sellers' godowns, and asking for the cheque which Grenon had on the previous day expressed his willingness to pay before delivery. Simultaneously with that letter Thomas & Co. also wrote to the defendants asking them to give delivery to Grenon at their Sulkea godowns, and stating that Grenon had agreed to deposit his cheque with them for the amount of the seed ; but immediately on receipt by Grenon on the 30th April of the letter to him, he writes back to Thomas & Co :— "

" Calcutta 30th April, 1891.

" DEAR SIRS,

" I beg to return herewith your delivery order on Messrs. Muckon Lall Gobindram for the 2,000 maunds Purneah indigo seed bought by me from

(1) The Indian Contract Act, IX of 1872, section 231, enacts : "If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract ; but the other contracting party has as against the principal the same rights as he would have had as against the agent, if the agent had been principal.

"If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract."

1896

GRENON v. LACHMI NARAIN AGGERWALA.

them under your contract No. 27, dated 27th October 1890, as it states that the seed is to be delivered to me from their Sulkea godowns. This is not in terms of the contract, nor is it according to my express request for delivery at the Howrah station, and I still insist upon taking delivery of the seed at the Howrah station and nowhere else, and if the seed is so ready for delivery I shall be glad to examine it and then hand you a cheque for the value of the same in order to my taking delivery, if the seed be all right."

After commenting on the improbability of Grenon's having, on the day before writing this, assented to delivery being made at the Sulkea godowns, and no allusion to the misunderstanding being made afterwards, the judgment set forth other correspondence including the broker's written request which concluded it, that the defendants would, under the terms of the contract of the 27th October 1890, give delivery at the Howrah station, and not at the Sulkea godown. And the Judge concluded in the following words:—

"The defendants decline to give delivery at Howrah, and delivery not having been taken from Sulkea they write the next day repudiating the contract.

"The conclusion at which I have arrived is that Grenon did not authorise Thomas & Co. to alter the place of delivery, and therefore, I think, that though they thought they were so authorised, they exceeded their authority by saying he had agreed to the alteration. I also think that the alteration not having been made with his authority he is not bound by it, and he is entitled to ask the defendants for completion of the contract at the place, namely, Howrah station, which he had selected for delivery. The goods were not so delivered, and the ordinary consequence must follow. The defendants must pay to the plaintiff the damages ordinarily assessable under such circumstances.

"The question then remains what are the damages for which the defendants are liable. The contract rate was Rs. 8-8 a maund, but I think the whole tendency of the evidence shews that as time went on Purneah seed became more and more difficult to obtain, and during the time up to May there was a steady rise for this commodity. Contracts have been put in for deliveries in May. There are two before me both of which were entered into in April, the one on the 4th and the other on the 30th. The first for delivery on or before the 10th May next, the second for delivery before the 15th May. These are for seed of the same quality and description as that in suit. The rate under the former is Rs. 13 per maund. That under the latter is 12-8, and there is evidence to shew that at the end of April rates were running from 12 to 13-8.

"Consequently, I think I shall not be far wrong if I hold that the rates

at the time this contract should have been completed ruled at Rs. 12 a maund for seed of this description."

"The plaintiff therefore is entitled to a decree on that basis."

From this judgment and decree the defendants appealed, almost entirely upon the contention that they were justified in offering delivery at Sulkea and not at Howrah station.

The plaintiffs filed a memorandum of cross-objections, on the ground that the first Court should have allowed damages at a higher rate.

The Appellate Court (PETHERAM, C.J., NORRIS, J., and O'KINEALY, J.) considered mainly one question, *viz.*, whether the plaintiff was entitled to insist on the seed being delivered at the Howrah station, which involved the question whether he was entitled to insist on its being delivered at any place in Bengal which he might select for its delivery.

As to this the Appellate Court inclined to the opinion that, were it not for the final words of the bought and sold notes, "the place of delivery to be mentioned hereafter," the construction contended for by the plaintiffs, and adopted by the first Court, would have been correct. But that the effect of the addition of those words was to show that the intention of the parties was that the place of delivery should be left for further agreement, and as no such further agreement was ever arrived at, "no contract had come into existence at all, but only an agreement as to price, to be carried out, if the other terms of the contract should eventually be arranged."

But the Appellate Court declined to rest its decision on that ground, as it had not been so contended by the appellants. And the judgment concluded in these words:—

"Assuming that the words do prove a contract it is a contract to sell 2,000 maunds of seed within March and April at a price, without any provision whatever as to delivery, and the question is what obligation to deliver does such a contract impose upon the seller? Sir G. Evans, for the buyer, argues that the case is within the provisions of section 49 of the Indian Contract Act read with the illustration (1), but this we do not think can be the case as,

(1) The Contract Act, IX of 1872, section 49, is as follows: "When a promise is to be performed without application by the promisee and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and to perform at that place."

1896

GRENON v. LACHMI NARAIN AUGURWALA.

if all the provisions as to delivery are taken out of this contract, there is no express agreement to deliver at all, and the case is one to which section 49 does not apply, but is the ordinary case of a sale of goods without any special promise as to delivery, such as is contemplated by section 94 (2), and in such a case the seller is not under any obligation to send the goods to the buyer or to any place at which he may require them. Even then, if there was any binding contract at all, we think that the defendants were not bound to send the seed to Howrah station, and that by refusing to do so they have not broken their contract. The appeal will be decreed, and the suit dismissed with costs."

Mr. *A. Cohen*, *Q.C.*, and Mr. *J. D. Mayne*, for the appellant, argued that the judgment of the Appellate High Court was erroneous, and should be reversed. The judgment of the first Court was correct as to the construction of the contract, and should be maintained; but should be amended by a larger amount of damages being awarded to the appellants. On the true construction of the contract, evidenced by the bought and sold notes, the plaintiff Grenon had the right to fix a reasonable place in Bengal for the delivery of the seed. The words, "the place of delivery to be mentioned hereafter," meant that the place was to be mentioned by Grenon, who, by his letter of the 20th March 1891 to the broker (which the latter forwarded to the vendors) had the right to mention the place, and he exercised his right by so doing, and the defendants were thereupon bound to deliver at the place fixed by him—the Howrah Railway station. The view was a mistaken one that the words relating to "mention hereafter" got rid of, out of the contract, the previous agreement that the seed should be delivered at some place in Bengal, meaning some reasonable place; and it was a mistake to assume that the reference to a deferred mention of the place left the contract without any express provision as to delivery. Nor was the judgment correct in assuming that the sale being of goods without any special promise for delivery, the place of delivery had been left open to be the subject of a future agreement between the parties, which never took place; and the judgment was incorrect that the case was within the con-

(2) Section 94 is as follows: "In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced."

templation of section 94 of the Indian Contract Act. It could not be said that there was no special promise as to delivery, but the case seemed to fall under section 49.

Mr. *Lawson Walton*, Q. C., and Mr. *J. H. A. Branson*, for the respondents, contended that the appellants were not entitled, by the contract of the 27th October 1890, to require the respondents to deliver the seed at any place other than the one where they had been ready and willing so to do, *viz.*, at their own godowns at Sulkea. The respondents, on the other hand, were entitled to repudiate the contract at the time when they did so, and were then no longer bound by it. The contract between the parties was susceptible of any one of three views, each tending to support the defence that the respondents having been ready and willing to deliver at their own godowns at Sulkea on the 30th April 1891 were exonerated from liability. The first view was that the defendants undertaking to deliver anywhere, over so large an extent of country as Bengal, would be inconsistent with their not having had in prospect the entering into a subsequent arrangement to determine a place of delivery with better defined limits. From the second point of view, as the first clause meant delivery anywhere in Bengal, the second clause was required to give definite effect by the naming a place agreed upon. For a further agreement there was occasion, which would not be satisfied by a mere indication on the part of the buyer at his choice alone. Without then the agreement, which never was arrived at, the contract remained incomplete. A third way of giving practical effect to the contract might have been to regard the action of the broker as within the authority given to him. It was submitted that the appellants were bound by the act of their agents in agreeing that the seed should be delivered at the respondents' Sulkea godowns,—the place which the agents at one time appointed for the delivery. The judgment of the High Court, on the dismissal of the suit, was supported by the Indian law.

Mr. *J. D. Mayne*, in reply, argued that section 42 of the Indian Contract Act supported the appellants' case.

On a subsequent day, June 27th, their Lordships' judgment was delivered by

LORD HOBHOUSE.—The action which gives rise to this appeal

1896

GRENON v. LACHMI NARAIN AUGURWALA.

is founded on a contract made through Thomas & Co. as brokers for both parties. It is in the usual form of bought and sold notes, dated 27th October 1890. The sold note addressed to the vendors, who are defendants, is as follows :—

"New Mart, Calcutta,
27th October 1890.

"Dear Sirs,

We have this day sold by your order and for your account, to our principals, 2,000 (two thousand) maunds of good fresh and clean new Purneah indigo seed to be of the growth of season 1890-91 at Rs. 8-8 (eight rupees eight annas) per maund.

The seed to be delivered at any place in Bengal in March and April 1891, and to be paid for by draft at 30 days date from date of delivery.

The seed to be packed in good strong bags and each bag to contain two maunds only."

The place of delivery to be mentioned hereafter.

Terms and conditions as above.

Brokerage 2½ per cent.

We are,
Dear Sirs,
Your obedient servants,
J. THOMAS & Co.,
Brokers.

To Babus Muckon Lall, Gobindram."

The bought note is in exact correspondence. There has been dispute whether the defendants ever recognized the plaintiff Grenon, who was sole plaintiff in the first instance, as the principal interested in the contract. That matter was decided against the defendants by Mr. Justice Hill, who presided at the trial, and it is not raised in this appeal.

The dispute which did arise and still exists between the parties relates to the place of delivery. Ultimately it came to a question between two places ; the plaintiff insisting on delivery at the Howrah Railway station, and the defendants refusing to deliver except at their own godowns at Sulkea. After much discussion through the brokers, the defendants wrote to them on 1st May 1891 as follows :—

"Dear Sirs,

Contract No. 27, dated 27th October 1890.

We waited all day yesterday to give delivery of the indigo seed sold to you from our Sulkea godowns, but as you failed to take delivery, we consider the contract at an end and cancelled."

Upon that the action was brought. The defendants contended that in the course of the correspondence the plaintiff had bound himself to accept their godowns at Sulkea as the place of delivery. After a careful examination of the evidence, Mr. Justice Hill decided that point also against the defendants. They have renewed their contention here, but without persuading their Lordships, who do not think it necessary to say anything more than that they entirely concur with Mr. Justice Hill on this point.

That leads to the question principally discussed at the Bar, how the contract is to be construed with reference to the place of delivery. The plaintiff contends that the place is to be some reasonable place mentioned by himself. The defendants contend, first, that the place was left over for future agreement; so that there is no concluded bargain until the parties have come to that agreement. Failing that argument they contend, secondly, that the seller can discharge his liability under the bargain by delivering, or offering to deliver, the goods at any reasonable place within the specified limits.

The former of these arguments was considered fully by the learned Chief Justice, who expressed an opinion in favour of its soundness, but did not decide the case on that ground, because the defendants' Counsel had not argued it. He held, indeed, that if the contract had contained only the first sentence relating to delivery, it would be very difficult to say that the seller had not contracted to deliver at any place in Bengal which the buyer might select. But he thought that the second sentence modified the meaning of the first; otherwise it would have no effect. The only way of making it effective is, the Chief Justice says, to construe it as meaning that the parties are to agree on the place. That conclusion has been ably supported here at the Bar.

Their Lordships agree that the first sentence relating to delivery gives the choice of place to the buyer, subject only to the expressed condition that it must be in Bengal, and to the implied one that it must be reasonable. But they cannot see how the choice which is given by the words "to be at any place" is taken away, or converted into a deferred agreement, by the statement that the place is "to be mentioned hereafter." That is a very unsuitable expression by which to reserve a point for

1896

GRENON v. LACHMI NARAIN AUGURWALA.

subsequent agreement. It would be quite simple to say "to be agreed on hereafter," if that were meant. But it is only "to be mentioned," and the obvious meaning of that term is that the place is to be mentioned by the party who, according to the former part of the agreement, had the right of mentioning it.

It is true that with such a meaning the sentence in question adds nothing of value to the document; it merely takes notice that some place of delivery is to be mentioned more definite than the very wide area of Bengal. The addition is natural enough, and though it may be legally superfluous, such superfluities are not unknown in agreements. The principle of giving a meaning to all expressions is a sound one, but it does not justify the importation of a meaning which the expression does not of itself suggest, for which another expression equally short and simple would more readily be used, and which materially affects the rights of the parties.

The learned Chief Justice considers that the contract should be read as if all the provisions for delivery were taken out of it. Then, he says, it would fall within section 94 of the Indian Contract Act, which deals with contracts where there is no special promise as to delivery; and which in the circumstances of this case would prescribe that the seed should be delivered where it is produced. But under any construction of the final sentence it contains a special promise as to delivery, and a delivery bounded by area, though it is true that the area is so large as to require further delimitation. Moreover, the contract is not to deliver at some place to be chosen or assented to by the seller, but at any place, without restriction, except the area of Bengal. It requires nothing more for completion than a mention of the place, and so far from falling within section 94, seems rather to resemble the contracts contemplated in section 49, where the promisee has not to make any application for performance, but no place is fixed. In those cases not only has the promisee the right of naming the place, but there is thrown on the promisor the duty of applying to the promisee to appoint a reasonable place.

Mr. Justice Hill did not enter into any discussion of arguments

such as these. He simply stated his opinion that the plaintiff was entitled by the terms of the contract to ask the defendants for its performance at the place selected by him, *viz.*, Howrah station. For the reasons above assigned, their Lordships have to express their agreement with him, and their dissent fom the opposite view of the High Court.

There is a further question as to the amount of damages. That depends upon the price of indigo seed at the time when the contract should have been performed. Mr. Justice Hill estimated the price at Rs. 12 per maund. His estimate rests partly on oral evidence, and partly upon two contracts made by Thomas & Co. for the sale of indigo seed ; one on 4th April and the other on 30th April 1891. He says that the rate under the earlier contract is Rs. 13 per maund, which is the case ; and that the rate under the latter is Rs. 12-8. As regards this latter contract, the learned Judge seems to have been misled by the circumstance that the same document contains a contract for the sale of Shirkarbhoom seed at Rs. 12-8. The price of the Purneah seed is Rs. 15.

The learned Judge says that there is evidence to show that at the end of April rates were running from Rs. 12 to Rs. 13-8. In fact, the evidence shows that the Calcutta rates were higher ; the lower rates mentioned by the learned Judge appear to be those at Pertabgunge, the principal mart in Purneah ; and something substantial (the plaintiff puts it as high as Rs. 2, but at least 8 annas) has to be added for freight to Howrah, and other expenses. The only evidence to the contrary is that of Balaram, one of the defendant's firm, who says that at the end of April they sold this seed in Calcutta at Rs. 6, and before that at Rs. 5-8. If this were true, it is incredible that the defendants should not gladly have taken the seed to Howrah for the contract price of Rs. 8-8.

Their Lordships do not go very minutely into this question because the plaintiffs' Counsel do not ask for an enhancement of damages on a higher basis than Rs. 13 per maund, and they have fully proved their case for as much as that.

By Mr. Justice Hill's decree additional plaintiffs, now represented by the appellants Juggun Nath and Ramjee Dass, were

1896

GRENON v. LACHMI NARAIN AUGURWALA.

placed on the record, and the defendants were ordered to pay to the plaintiffs Rs. 7,000 with interest and costs of suit. The High Court decree simply dismissed the suit with costs in both Courts. The proper course now will be to discharge the decree of the High Court; to order the defendants to pay the costs of appeal in that Court; to vary the decree of the first Court by substituting the sum of Rs. 9,000 for Rs. 7,000; and in other respects to affirm that decree. Their Lordships will humbly advise Her Majesty in accordance with this opinion. The respondents must pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellants: Messrs. *Wrentmore & Swinhoe.*

Solicitor for the respondents: Mr. *J. F. Watkins.*

C. B.

APPELLATE CIVIL.

1896

June 16.

Before Mr. Justice Ghose and Mr. Justice Gordon.

SATYESH CHUNDER SIRCAR AND ANOTHER, MINOR, BY HIS MOTHER MATANGINI DEBI (DEFENDANTS) *v.* DHUNPUL SINGH (PLAINTIFF).*

Lease—Subsequent written agreement to abate rent—Variation of lease—Transfer of Property Act (IV of 1882), section 107—Evidence Act (I of 1872), section 92—Registration Act (III of 1877), sections 17 and 18.

In the year 1879 the plaintiff granted a lease of certain lands to the father of the defendants. In May 1889 he agreed in writing to allow the defendants an abatement of rent to the extent of Rs. 100 per annum. This agreement was not registered, but was stated in the plaint in a previous suit brought by the plaintiff. He subsequently brought a suit against the defendants for the recovery of the entire amount of the original rent.

Held, that the defendants could rely on the agreement, and that section 92 of the Evidence Act (I of 1872) did not apply to it.

Held, also, that the agreement did not operate as a lease, but was merely a variation of the lease, and that, therefore, registration was not necessary.

Held, therefore, varying the order of the District Judge, that the decree for the entire amount of the original rent must be set aside, and a decree made for the amount of rent due at the reduced rate.

* Appeal from Original Decree No. 344 of 1894, against the decree of J. Whitmore, Esq., District Judge of Beerbhoom, dated the 18th of August 1894.