

APPELLATE CIVIL.

(7)

Before Mr. Justice West and Mr. Justice Pinhey.

APU BUDGAVDA (ORIGINAL DEFENDANT), APPELLANT, ^{*}v. NARHARI
ANNAJEE (ORIGINAL PLAINTIFF), RESPONDENT.¹

1878
August 6.

Registration—Lease—Act VIII of 1871, ss. 3 & 18.

A lease, for one year certain, containing an expression, on the tenant's part, of readiness to hold the land longer at the same rent if the landlord should desire it, is a lease for a term not exceeding one year, the registration of which is optional under s. 18 of the Indian Registration Act (VIII of 1871.

The expression "an undertaking to cultivate or occupy" used in s. 3 of Act VIII of 1871 in defining the word "lease," means an *accepted* undertaking giving to the lessee a right or interest in the thing let.

THIS was an appeal from the decision of A. L. Spens, Judge of North Kanara, confirming the decree of the Subordinate Judge of Karwar. On the 11th of June 1872 the defendant took certain lands from the plaintiff, agreeing as follows :—

"We undertake to cultivate the said land for the year 1872 at a rental of Rs.—, which we agree to pay punctually. If you permit us to cultivate the land another year, we will pay the same rent as settled for 1872. If you choose to withdraw the land, we are not to object."

The plaintiff on the 3rd of November 1873 sued the defendant to recover possession of the lands so leased and the rent for the year-1872. The lower Courts admitted the above document in evidence, although not registered, and gave a verdict in plaintiff's favour.

The defendant appealed.

Shantaram Natayán for the appellant.—The Judge has misconstrued the lease in holding that it was an agreement for one year only, for the parties contemplate a possible and probable extension of the lease beyond the year. Such a document falls within s. 17 of the Registration Act, and being unregistered, was not admissible in evidence.

Shamrav Vithal for the respondent.—The lease is expressly a lease for one year, at the expiration of which the tenancy must

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come to a close, and is not liable to a renewal until the landlord, exercises the option given him. Its registration was, therefore, not compulsory but optional.

WEST, J.—We think that the document (exhibit 29) is admissible, though unregistered. It is a *kabuliyat* for one year certain and an expression, on the tenant's part, of readiness to hold the land longer at the same rent if the landlord should desire it. Such an agreement did not, by the landlord's accepting it and allowing the tenant to enter, create in the tenant any interest extending beyond one year. At the end of the year it would depend entirely on the landlord whether that interest should be renewed or not. 'Lease', no doubt, according to s. 3 of Act VIII of 1871, included "an undertaking to cultivate or occupy," and it has been contended that there was such an undertaking here; but we understand 'undertaking' to mean one accepted so as to give to the tenant a right or interest in the land, not an undertaking to take up the land if the owner should at some future time desire it. This view of the law agrees with that taken in the case of *Hand v. Hall*(1) on a similar point, where a possible extension of a term of less than three years at the option of the landlord was thought not to constitute a lease for more than three years, though such a term, if extensible at the option of the tenant, would exclude the saying clause of the Statute of Frauds. The Court of Appeal considered the agreement for an optional extension, but that only, to be void.

The claim is according to the terms of the *kabuliyat*, which would govern the relations of the parties if the tenancy was continued without a new agreement beyond the time for which it provided. We, therefore, confirm the decree of the District Court with costs.

Decree confirmed with costs.

(1) L. R. 2 Ex. D. 318; and on appeal, *Ibid.*, 355.