

ORIGINAL CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

HURJIVAN VIRJI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS,
v. JAMSETJI NOWROJI (ORIGINAL PLAINTIFF), RESPONDENT.*

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September 19.

Registration—Suit to compel registration—Evidence—Document being unregistered held inadmissible to prove the contract sought to be registered—Registration Act III of 1877.

The defendants agreed to let certain premises to the plaintiff for a term of three years from the 1st of November, 1883, at a monthly rent of Rs. 200. Subsequently to the making of the agreement, *viz.*, on the 17th January, 1884, the plaintiff caused a writing to be prepared, which, as he alleged, contained the terms of the lease agreed on, and, having signed it, handed it over to the defendants. The defendants did not sign it, and the document remained with them. The plaintiff alleged that he did not ask the defendants to sign it, as the defendants told him they would get a copy of it prepared, which they would sign and send to him. The defendants alleged that, at the time the document was given to them by the plaintiff, they objected to it on the ground that it was incomplete, inasmuch as it did not contain two of the terms agreed on which prohibited the plaintiff from sub-letting or altering the premises, and required him to maintain them in their then existing condition. The plaintiff denied these allegations of the defendants.

In May, 1884, the plaintiff, through his attorneys, called upon the defendants to lodge the document for registration. The defendants refused, and the plaintiff filed the present suit praying—(1) that the defendants might be ordered to lodge the said document for registration and do all such acts as might be necessary to obtain registration thereof; (2) that, if necessary, another similar document might be prepared and registered; (3) that, in the alternative, the defendants should pay Rs. 4,000 damages. At the trial the plaintiff raised (*inter alia*) an issue as to the truth of the defendants' allegation that the agreement of lease comprised terms forbidding the plaintiff to sub-let or alter, &c. The defendants objected to the proposed issue. In the course of the hearing the plaintiff tendered the document of the 17th January, 1884, in evidence. The defendants objected, on the ground that it was unregistered. The Court held that it was admissible as a mere writing, with reference to which, irrespective of its contents, the other evidence in the case was given. At the close of the plaintiff's case the defendants declined to call evidence, and judgment was given on all the issues in favour of the plaintiff.

The defendants appealed, and contended that they were not bound to produce the document for registration; that the Court was wrong in permitting the above issue to be raised and determined in this suit, and that the document being inadmissible as evidence of the contract, no oral evidence of the contract was receivable. The plaintiff contended that there was an implied obligation upon the defendants to register the document arising from the fact that the documen

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contained the true contract between the parties, and that the object of the suit being to compel registration, the document, although not registered, could be given in evidence to prove the contract between the parties.

Held (reversing the decree of the Court below) that there was no obligation upon the defendants to produce the document for registration, and that they could not be compelled to do so.

Held, also, that the object of giving the document in evidence being to establish the contract of lease for the purpose of drawing an inference from it, the document was for that purpose inadmissible, being unregistered, and that the Court below, although admitting it originally as merely a piece of paper, was wrong in using it as evidence of the contract between the parties.

SUIT to compel registration. The plaintiff stated that by a Gujarati writing dated 17th January, 1884, the defendants demised to the plaintiff, for three years from the 1st November, 1883, at a monthly rental of Rs. 200, certain premises situate in Bombay; that after the said writing had been duly executed it was given to the defendants, and ought to have been presented by them for registration in due course; that the document had not been registered, although the plaintiff had frequently requested the defendants to register it; that the four months, within which the document ought to be registered, were about to expire.

The prayer of the plaintiff was as follows :—

“ That the defendants may be ordered to produce the said document bearing date the 17th January, 1884, and lodge the same for registration, and do all such acts on their part as may be necessary in order to obtain registration of the same.

“ That, if necessary, another document, similar in its terms to the said document of the 17th January, 1884, may be prepared by and under the directions of this Honourable Court, and that the defendants may be ordered to do all such acts as may be necessary for the due execution and registration of the same.

“ That, in the alternative, this Honourable Court will order the defendants to pay to the plaintiff the sum of Rs. 4,000, or such other sum as to this Honourable Court may seem fit, by way of compensation and damages for their wrongfully preventing and hindering the registration of the same document.”

In their written statement the defendants submitted that the suit was not maintainable, and, without waiving the said defence,

they proceeded to set forth the circumstances under which (as they alleged) the document had been executed and delivered to them by the plaintiff. They stated that previously to 1883 the plaintiff had been for eleven years in occupation of the premises in question; that the lease, under which he occupied, expired on the 31st October, 1883, and that, prior to that date, the plaintiff had been in negotiation with the defendants for a new lease. Ultimately the terms of a new lease for a period of three years from the 1st November, 1883, were agreed upon between them—two of the said terms being that the plaintiff should not sublet the premises, and that he should not make any alteration in, or addition to the same, but should maintain them in their then existing condition; that upon the terms agreed on, which were not reduced to writing, the plaintiff continued in occupation after the expiration of the old lease. They further alleged that “on the 17th January, 1884, the plaintiff handed to the defendants a document, in the handwriting of the plaintiff’s *metha*, purporting to contain the terms of the new lease. On reading the said document the defendants discovered that two of the said terms were omitted therefrom, *viz.*, which provided that the plaintiff should not sublet or make any alteration or addition to the said premises, and should maintain them in the same order and condition in which they were at the date of the said agreement. The defendants thereupon called the attention of the plaintiff to the said omissions, and objected that the document was incomplete; but the plaintiff stated that the verbal agreement, with reference to the matters so provided for, was sufficient, and that it was not necessary to insert the said terms in the document.”

On the 7th May, 1884, the plaintiff’s attorneys wrote to the defendants, requiring them to lodge the said document for registration. By letter dated the 8th May, 1884, the defendants replied, through their attorneys, that the document was not lodged for registration, because the same was incomplete, and did not contain certain of the terms agreed upon between the parties thereto, and which ought to appear therein, and stating further that the defendants were willing to lodge the said document for registration if the said terms were inserted.

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Under the above circumstances the defendants contended that the document was not binding on them, and that they were not at any time bound to have it registered.

The document was signed by the plaintiff and attested, but was not executed by the defendants.

The following were the material issues raised at the hearing by counsel for the defendants:—

“2. Whether the Gujaráti writing of the 17th January, 1884, not being executed by defendants, was duly executed.

“3. Whether the plaintiff is entitled to maintain a suit against the defendants to compel them to produce the said document, lodge it for registration, and do all other acts necessary to obtain registration.

“4. Whether the plaintiff is entitled to the relief claimed in the prayer of the plaint.

“5. Whether the plaintiff is entitled to the relief prayed, or any part thereof.”

Counsel for the plaintiff then raised the following issue:—

“6. Whether the allegation in paragraph 7 of the written statement—that two of the terms on which the defendants agreed to lease the premises to the plaintiff, *viz.*, (a) that plaintiff should not sublet the said premises or any part thereof, and (b) that the plaintiff should not make any alteration and addition thereto, but maintain the same—is true.”

Whereupon counsel for the defendants added a further issue, *viz.*,

“7. Whether the sixth issue can be determined in this suit.”

For the defendants it was contended that the Court should decide the suit upon the third issue, and that no evidence was necessary. For the plaintiff it was objected that the third issue could not be decided without taking evidence, and the Court held that evidence might be given.

The plaintiff was then called, and swore that he had not agreed with the defendants not to sublet or alter the premises, but that, on the contrary, it had been agreed that he was to be at liberty to do both, and that the document of the 17th Janu-

ary, 1884, contained all the terms of the new lease. He stated that that document had been copied by his *methá* from a draft which had been sent to him by the defendants; that he had taken the document to the defendants' house, signed it there, and then had handed it over to the defendants; that the defendants had told him that they would get a copy prepared, and sign it, and send it to him, and that he did not ask the defendants to sign this document, because they said they would give him a copy, and that he could get a copy from the Registrar's office after it was registered.

Evidence was also given that the defendants had taken the document in question to the Registrar's office in company with the plaintiff's son for the purpose of registering it, but that it had not been registered on that occasion, because the plaintiff's son had no power of attorney from the plaintiff authorizing him to acknowledge the plaintiff's signature.

In the course of the hearing the document of the 17th January, 1884, was tendered in evidence. Counsel for the defendants objected to its admission, on the ground that it was not registered, but the objection was overruled, and the document was admitted.

At the close of the plaintiff's case counsel for the defendants declined to call any evidence.

The Court found all the issues in favour of the plaintiff.

In delivering judgment, Birdwood, J., said: "The document has been filed as exhibit J. Its admission was objected to, because it had not been duly registered under the provisions of the Act, and the decisions of the Calcutta High Court in the case of *Edun v. Mahomed* (1) and *Sheikh Rahmatulla v. Sheikh Sariutulla* were specially relied on by the defendants in support of their contention, that the suit was not maintainable. If the document is inadmissible under section 49 of the Act, then, apparently, under those rulings the suit would not be maintainable. But I have received the document, not for the purpose of proving any transaction affecting immoveable property, but as a mere writing, with reference to which, irrespective of its contents, the remaining evidence in the case is given. It is the subject-matter to which

(1) I. L. R., 9 Cal., 150.

(2) 1 Beng. L. R. (F. B.), 58; S. C. 10 Cal. W. R. (F. B.), 51.

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the evidence all points, and is not itself, till it is registered, evidence as to any relations between the parties, except such relations as may be connected with the right to have the document registered. The subject of the present suit is not the contract between the parties, but a certain writing which, if the right to enforce its registration is established, would become evidence of the contract. In order to enable the Court to determine this right the document may, I think, be received. For such an object, an unregistered document is made expressly receivable in a suit under section 77 of the Act. The Registration Act nowhere expressly provides for such a suit as the present; but if the suit is maintainable at all, then, as its object is the same as that of a suit under section 77, it may, I think, be held that, for the purpose for which an unregistered document in a suit regularly brought under that section is receivable in evidence, it may also be received in such a suit as the present. The present suit would be maintainable under section 11 of the Civil Procedure Code, unless the Court's cognizance of it is barred by any enactment for the time being in force. There is certainly no express provision of Act III of 1877 which bars it. * * *

“The writing of the 17th January, 1884, is clearly one in which the plaintiff has an interest. It seems to be similar to the *bharekhat* described in the case of *Moro Vithal v. Tukárám*⁽¹⁾. It is the only record of an agreement under which a lease of the premises occupied by the plaintiff is said to have been secured to him for three years. It is made, no doubt, for the benefit of the defendants, but it was made also for the benefit of the plaintiff. He is interested in its registration, and on this ground alone, if the general policy of the Registration Act be regarded, he must be held to be entitled to take steps to enforce its registration. The suit is one in pursuance of the general policy of the Act, and is, therefore, one which the Court will favour. The plaintiff is not entitled to the possession of the document, which is the property of the defendants. It is now in the custody of the Court. The proper way to deal with it will be to place it in the custody of the plaintiff's attorney with a view to its presentation for regis-

(1) 5 Bom. H. C. Rep., A. C. J., 92.

tration before the 17th proximo, the latest date on which it can be received by the Registrar under section 24 of the Act.

"It will be delivered to the plaintiff's attorney on the morning of the 25th instant, and will be returned to the custody of the Court after registration.

"These remarks sufficiently dispose of the third, fourth, and fifth issues. With reference to the sixth issue, I am of opinion, that the sixth issue was relevant, as the seventh paragraph of the written statement disclosed a good defence to the suit. As, however, no evidence was adduced by the defendants in support of their contention [the sixth issue is found against them."

The defendants appealed.

Hon. C. F. Farran (Acting Advocate General) and *Kirkpatrick* for appellants.—The plaintiff sues to compel the defendants to register. The suit does not lie. If there is any obligation on the defendants it must spring out of an express or implied agreement on their part to register. Here there was neither. The present Registration Act (III of 1877) does not contemplate a case, like this, where it is sought to compel a person, who has not executed a document, to register it. The Act does not even impose this obligation upon a person who has executed it. It only empowers a party presenting a document for registration to call upon the executing party to acknowledge his signature. That is the only obligation resting upon him—*Tulsi Sahu v. Mahádeo Das* ⁽¹⁾; *Bhagvan Singh v. Khuda Baksh* ⁽²⁾; *Edun v. Mahomed Sidik* ⁽³⁾; *Lakhimoni v. Akroomoni* ⁽⁴⁾. The case of *Rám Ghulám v. Chotey Lal* ⁽⁵⁾ is not law.

[SARGENT, C. J.—In the case of a signed contract would not the Courts require a party to it to do all acts requisite to make it effectual?]

No. The Registration Act imposes upon the party, who has the document, the duty, or gives him the right, to register it, and it provides machinery for the purpose. But the Court will not

(1) 2 Beng. L. R., A. J., 105.

(3) I. L. R., 9 Cal., 150.

(2) I. L. R., 3 All., 397.

(4) I. L. R., 9 Cal., 851.

(5) I. L. R., 2 All., 46.

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order registration. The *dicta* in *Prohhoorám Hajráh v. Robson*⁽¹⁾, as to there being virtually a contract to register, are wrong. The contract there, as in every similar case, was simply a contract to execute a conveyance or lease. In *Meer Shunshare v. Syud Julapat* ⁽²⁾ the decision was right; but the *dictum* of Phear, J., that the Court could compel the defendant to register, was wrong. It could only restore to the owner the stolen document. In the present case no suit would lie to compel the defendant to sign the document in question. How, then, can he be compelled to register it? The case of *Girdhar Dalpat v. Haribháí*⁽³⁾ is directly in our favour. In *Sheikh Rahmatulla v. Sheikh Sariutulla*⁽⁴⁾ it is clear that Peacock, C. J., was of opinion that there was no obligation to register. The other side relies on *Rám Ghulám v. Chotey Lal* ⁽⁵⁾, where it was broadly held that a vendor who executed a deed of sale can be compelled by suit to register it. That case decides that it is the duty of a person passing a document in favour of another to register it. We submit that case is not law. It was for the party, in whose favour the conveyance was made, to register it if he pleased. The case of *Bhagvan Singh v. Khuda Baksh*⁽⁶⁾ in effect overrules the case of *Rám Ghulám v. Chotey Lal* ⁽⁷⁾, for it decides that no suit lies; but if, as Stuart, C. J., said in *Rám Ghulám v. Chotey Lal*, the sections of the registration Act are permissive, a suit would lie—*Edun v. Mahomed Sidik* ⁽⁸⁾, and *Lakhimoni v. Akroomoni* ⁽⁹⁾ dissents from *Rám Ghulám v. Chotey Lal*⁽¹⁰⁾.

It is clear that a party executing a document cannot be compelled by suit to register it, except under section 77 of the Registration Act. It follows, that the law does not recognize that the mere fact of execution imposes an obligation to register. *A fortiori*, there is no obligation upon a person who has not executed a document which has been passed in his favour. This is not a suit under section 77. This document has never been presented for registration. The proper course for the plaintiff

(1) 11 Cal. W. R. Civ. Rul., 398.

(5) I. L. R., 2 All., 46.

(2) 18 Cal. W. R., 504.

(6) I. L. R., 3 All., 397.

(3) 7 Bom. H. C. Rep., A. C. J., 3.

I. L. R., 2 All., 46.

(4) 1 Beng. L. R. (F. B.), 58; S. C.,

(8) I. L. R., 9 Cal., 150.

10 Cal. W. R. (F. B.), 51.

(9) I. L. R., 9 Cal., 851.

(10) I. L. R., 2 All., 46.

here would have been to get the defendant to execute a counterpart. That seems to have been contemplated when he asked for a "signed copy". If a counterpart had been given to the plaintiff, he could have registered it, but would the defendant then have been bound to register this document? If not, how does his neglect to give a counterpart impose such an obligation on him? It is said to be a hardship on plaintiff if he has no remedy. The hardship is the result of his own negligence in not getting a counterpart. Under the Statute of Frauds in England it is a hardship upon the party, who has signed a contract, that it can be enforced against him, while he cannot enforce it. Nevertheless, it is the law.

Further, the Court below was wrong in permitting the sixth issue to be raised, and in taking oral evidence as to the contract, and in admitting the document in evidence. In deciding that issue it has declared what the contract was. It did so either upon the evidence of the document, or upon the oral evidence. But the document not being registered, was inadmissible—sections 17 and 49 of the Registration Act—, and that being so, the oral evidence was inadmissible—*Kachubhái v. Krishnábái* ⁽¹⁾. If this document be held admissible, the very evils intended to be prevented by the Registration Act will arise. A person may then allege that a document in the possession of another is an agreement for a lease, sue for its registration, put it in evidence although unregistered, and have the terms of the contract declared. It is only in suits brought under section 77 that such a document is admissible by the provisions of that section. In the case of *Luchmeeput v. Mirza Khyrat* ⁽²⁾ and *Sham Narain Lall v. Khemajeet Matoe* ⁽³⁾ the document was admitted for collateral purposes not to affect the land. Here the plaintiff alleges the document is a lease, and, as such, ought to be registered by the defendant, and, therefore, the suit is one to affect the land—*Ulfatunnissa v. Hosain Khan* ⁽⁴⁾.

Inverarity and Jardine for respondent.—The Court below was right in deciding the sixth issue. It was necessary to

(1) I. L. R., 2 Bom., 635.

12 Cal. W. R. (F. B.), 11.

(2) *Ibid.*, 13.

(4) I. L. R., 9 Cal., 520.

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ascertain whether the document was really the contract between the parties. If it was not, we admit we could not claim to have it registered. The defendants by their written statement raised the question. The document here was an agreement to occupy. It was the only document executed, and was intended to be the only document of title for both parties. Such documents are usual in Bombay—*Moro Vithal v. Tukárám* ⁽¹⁾. That being so, the plaintiff was entitled to have his rights secured by registration. He desires to register it, but the defendant refuses to produce it. Section 32 of the Registration Act gives the executing party a right to present the document.

[SARGENT, C. J.—Of course you had a right to present it while it was in your hands, but have you the right after you have delivered it to the defendant as his title-deed?]

Yes. Before delivery it had no effect. It was delivered and accepted by the defendant, and then became binding on both parties. A mortgagor, who hands his title-deeds to a mortgagee, by way of equitable mortgage, with a memorandum, is entitled to have the memorandum registered. If not, he is wholly in the power of the mortgagee; where there is only one document of title, there is an implied agreement to make it effectual by registration—*Probhoorám Híjráh v. T. M. Robinson* ⁽²⁾; *Meer Shumshare Ali v. Syud Lutafal* ⁽³⁾; *Rám Surun Dass v. Rám Chund* ⁽⁴⁾; *Rám Ghulám v. Chotey Lal* ⁽⁵⁾. The case of *Rám Ghulám v. Chotey Lal* ⁽⁵⁾ is an express authority that a party can be compelled to register. None of the Registration Acts have ever provided for a case like this. See Act XVI of 1864, sec. 15; Act XX of 1866, sec. 84; Act VIII of 1871, sec. 73; Act III of 1877, sec. 77. The cases cited to show that no suit lies, only show that, in cases falling within the Registration Acts, it is necessary to take the proceedings provided by the Acts, but they do not affect the present case. Here the document has never been presented for registration. The evidence here shows there was an agreement to register; but, apart from that, the

⁽¹⁾ 5 Bom. H. C. Rep., 92, A.C.J.

⁽³⁾ 18 Cal. W. R., 504.

⁽²⁾ 11 Cal. W. R., 398.

⁽⁴⁾ 1 N. W. P., 283.

⁽⁵⁾ I. L. R., 2 All., 46.

defendant is bound to put us in a position to register. The Registration Act says, this document shall be registered, and section 32 does not limit the right to register to person in possession of the document. Any person claiming under a document may register.

SARGENT, C. J.—The plaintiff's claim in this case is that the defendants may be ordered to produce the document dated 17th January, 1884, and lodge it for registration, and do all such acts on their part as may be necessary in order to obtain registration of the same.

The document in question is stated in the plaint to be a demise from the defendants to the plaintiff of certain property situated on Kálbádevi Road for a term of three years from the 1st November, 1883; but it is not disputed by the plaintiff, that, as a fact, it was an agreement, or *kabuláyat*, passed by the plaintiff by which he agreed to take the said premises on lease on certain terms. This document was signed by the plaintiff alone, and given to the defendants by the plaintiff. If, therefore, the plaintiff is now entitled to call upon the defendants to lodge the same for registration, it must be in virtue of some undertaking, express or implied, on the part of the defendants. It was, indeed, argued for the plaintiff, that the defendants were bound, by the provisions of the Registration Act, to do so, and section 32 was relied on in support of that view; but that section, while it empowers certain persons to present documents for registration, on the assumption that they are in their possession or under their control at the time, imposes no obligation on any one to produce a document for the purpose of registration.

Now, we do not think it was contended that there was any express obligation on the defendants to produce for registration the document in question. The utmost which the plaintiff's evidence could establish on that part of the case was, that when the document was left with the defendants, the *metha* of the defendants said they would send the plaintiff "a signed copy". It was contended, however, that such an obligation was to be implied from the fact that the document contained the true contract between the parties, and was intended to be the document

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of title of both of them; and it was further contended, on the authority of the decisions of the Full Bench at Calcutta⁽¹⁾, that the object of this suit being to compel registration, the document, although not registered, could be given in evidence to prove the contract between the parties. In those cases, however, as well as in the hypothetical case put by Sir B. Peacock, C. J.,⁽²⁾ in the course of his judgment, which was much relied on, the unregistered document was not used in order to establish the contract, but for a collateral purpose, *viz.*, to enable the plaintiff to obtain relief in the shape of damages for the defendant's breach of covenant to register contained in the document itself, or in an independent agreement which did not contain all the materials for the assessment of damages. Here, however, the object of giving the document in evidence is to establish the contract of lease for the purpose of drawing an inference from it.

In the Full Bench Case of *Sheikh Rahmatulla v. Sheikh Sariutulla*⁽³⁾, in which Sir B. Peacock, C. J., took part, the plaintiff was not allowed to prove his title by an unregistered document, with a view to compelling registration of it, and that case was followed by the Court in *Edun v. Mahomed*⁽⁴⁾, where the plaintiff claimed a right to compel registration under circumstances showing, as he alleged, a valid contract between himself and the defendant. Mitter, J., says: "The most formidable objection to the maintenance of a suit of this nature lies in the circumstance that, under the Registration Act, the *mokurari patta* cannot be received in evidence, because it has not been duly registered under its provisions. The *patta* being not receivable in evidence, the main allegation upon which the plaintiff's suit is based, *viz.*, that *mokurari* grant was made, is not capable of proof. It was upon this ground that a Full Bench of this Court in the case of *Sheikh Rahmatulla v. Sheikh Sariutulla Kagchi*⁽⁵⁾ held that a suit like the present would not lie."

We are of opinion, therefore, that the learned Judge in the Division Court, although admitting the document in question

See 12 Cal. W. R. (F. B.) at pp. 11, 12, 13.

(3) 1 Beng. L. R. (F. B.), 58.

(4) I. L. R., 9 Cal., 150.

(2) 12 W. R. (F. B.), p. 13.

(5) 1 Beng. L. R. (F. B.), 58.

originally merely as a piece of paper, was wrong in using it, as he subsequently did, as establishing the contract between the parties in which, as such, the plaintiff was interested, and which he was, therefore, entitled to have registered.

We must, therefore, reverse the decree, and dismiss the plaint with costs throughout.

Decree reversed.

Attorneys for appellant.—Messrs. *Little, Smith, Frere and Nicholson.*

Attorneys for respondent.—Messrs. *Jefferson, Bhaishankar and Dinshá.*

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APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánabhái Haridás.

BHOLA'BHA'I (ORIGINAL PLAINTIFF), APPELLANT, v. ADESANG, MINOR
BY THE COLLECTOR OF KAIRA, AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

August 12.

Res judicata—Issue decided in a suit not subject to appeal—Same issue raised in a subsequent suit subject to appeal—Small Cause Court suit—Jurisdiction—Civil Procedure Code (Act XIV of 1882), Sec. 13—Meaning of the words “competent to try such subsequent suit”.

In 1879 the plaintiff brought a suit against the defendants to recover Rs. 119, which he alleged had been wrongfully exacted from him by the defendants as enhanced rent of certain land in his occupation. He claimed to be owner of the land subject to a quit-rent payable to the defendants. The defendants denied his ownership, and asserted their right to levy the enhanced rent. The lower Court held that the defendants were entitled to the enhanced rent, and dismissed the plaintiff's claim, and the decree was confirmed, in appeal, by the District Court. The plaintiff appealed to the High Court, which held that the plaintiff's claim, being for an amount less than Rs. 500 and within the cognizance of a Court of Small Causes, no second appeal lay.

In 1883 the plaintiff brought the present suit in the District Court to recover from the defendants the sum of Rs. 689 alleged to have been wrongfully exacted from him by the defendants as enhanced rent of the land in question. He made the same allegations as in the former suit. The District Judge dismissed the suit, holding it to be *res judicata*. The plaintiff appealed to the High Court.

Held, that, although the material question in both suits was the same, *viz.*, as to the defendants' right to enhance the plaintiff's rent, yet the decision of the District

*Appeal, No. 40 of 1883.