

Every lottery is either authorized or not authorized by Government. The section does not touch authorized lotteries, but intends to save people from the effects of those not authorized (1st) by prohibiting the keeping of offices or places for drawing them, and (2ndly) by prohibiting the publication of any advertisement relating to them. After the first prohibition, the chance of any office being kept in British India for drawing lotteries not authorized by Government is very small indeed. But people not subject to our laws may contrive to open offices for that purpose out of British India, but still near our own doors—at Navsari or Daman for instance, and thence send advertisements to all the widely-circulated newspapers throughout British India. In that case, if the section were to be narrowly construed as applying only to lotteries to be drawn in British India, the object aimed at by the second prohibition, to prevent the mischief of people in British India being drawn into temptation by such publications, would be very nearly, if not utterly, defeated. The words of the section are wide enough to include foreign lotteries, and we have no reason to suppose the Legislature intended to exclude advertisements relating to them from the operation of section 294A of the Indian Penal Code (XLV of 1860). We make no order as to the costs of this reference.

The Magistrate should be informed accordingly.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

PURMA'NANDDA'S JIWANDA'S, (ORIGINAL DEFENDANT), APPELLANT,
v. DHA'RSEY VIRJI, (ORIGINAL PLAINTIFF), RESPONDENT.*

1885.
September 18.

Registration—Act III of 1877, Secs. 17, Cl. (d), and 49—Agreement for lease—Evidence.

Under clause (d), section 17, of the Registration Act III of 1877, an agreement for a lease needs registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed, the paramount intention as gathered from the whole of the instrument must prevail.

* Suit No. 18 of 1883.

1885:

PURMÁNAND-
DÁS
JIWANDÁS
v.
DHARSEY
VIRJI.

SUIT for specific performance of an agreement dated the 19th October, 1882, whereby the defendant agreed to lease certain property to the plaintiff for a period of four years, and for compensation for withholding performance of the said agreement, or, in the alternative, for damages.

On the 8th October, 1882, the defendant Purmánanddás Jiwandás by an agreement in writing with one Davidás Hurjivandás agreed to lease to the said Davidás a certain property, called "the market," for a period of four years. The agreement was not registered. It contained a provision that a formal lease should be subsequently executed, and duly stamped and registered.

The agreement was in the following terms:—

"I agree to give you a contract for my property, called the market, at the rate of seventeen per cent. per month more than it realizes now. The rent to commence from 1st October, 1882. I have received in advance a note of Rs. 500 No. ^{1560 23}_{1351 89} of 1865, and the balance to be paid to-morrow, namely, Monday, before 10 A.M. This contract to run for four years certain. A *pucká* agreement to be drawn by me, which must be stamped and registered at your expense.

"If I sell or rebuild the market, this contract becomes null and void. The rent to be paid on the 1st of each and every month. A grace of ten days to be allowed. In the event of my failing to pay the monthly rent before the due date, you will have no claims upon the deposit, Rs. (1,000) one thousand, and the contract becomes null and void.

"If you fail to pay by Monday to-morrow at 10 A.M., the amount of Rs. 500, paid by you this day, to be forfeited, and the agreement becomes null and void."

On the 19th October, 1882, the defendant Purmánanddás Jiwandás entered into an agreement with the plaintiff to give him a lease of the same property for a period of four years. This agreement was registered. On the 27th October, 1882, the defendant Purmánanddás, in pursuance of the first-mentioned agreement, executed a formal lease of the property to Davidás Hurjivandás, which was duly registered.

The plaintiff thereupon brought this suit for specific performance of the agreement of the 19th October, 1882.

The defendant, Purmánanddás Jiwandás, pleaded, as a defence to the suit, that he had been induced to enter into the agreement of the 19th October, 1882, with the plaintiff by reason of the fraudulent misrepresentation of the plaintiff to the effect that the first agreement of the 8th October, 1882, with Davidás was not binding, and that a fresh agreement might, without risk, be made with him; but that he, (the defendant), had subsequently been obliged to carry out the first agreement, and to execute a lease to Davidás.

In the course of the hearing, the lease of the 27th October, 1882, to Davidás Hurjivandás was put in evidence; and subsequently counsel for the defendant tendered in evidence the agreement for the said lease, dated the 8th October, 1882. Counsel for the plaintiff objected to its admission on the ground that it was not registered. The Judge held it to be inadmissible, and ultimately passed a decree for the plaintiff.

The defendant appealed, and in appeal raised the question whether the said agreement ought not to have been admitted in evidence. He contended, first, that it did not need registration; secondly, that, even if it did need registration, nevertheless, as the plaintiff had notice of it at the date of the subsequent agreement made with him on the 19th October, 1882, it was in equity binding upon him, and ought to be admitted in evidence although unregistered; thirdly, that it was admissible for a collateral purpose, viz., (a) to show there was a transaction binding on the conscience of the defendant; (b) on the question of damages, to show that the amount of rent reserved in the registered lease was 17 per cent. more than the rent then received by the defendant, and thus fix the latter sum. The following cases were referred to:—*Burjorji Cursetji Panthaki v. Muncherji Kuverji* ⁽¹⁾; *Ohunilál Pandlál v. Bomanji Mancherji Modi* ⁽²⁾; *Le Neve v. Le Neve* ⁽³⁾.

Latham (Advocate General) and *Telang* for the appellant.
Inverarity and *Jardine* for the respondent.

(1) I. L. R., 5 Bom., 143.

(2) I. L. R., 7 Bom., 310.

(3) 2 White and Tudor L. C., p. 32, (ed. 1877.)

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SARGENT, C. J.—We think that the agreement in question operated as an actual demise, and required to be registered under clause (d) of section 17 of the Registration Act III of 1877. The terms, “I agree to give you a contract for my property,” taken in connection with the provision as to rent and the period for which the contract was to last, are equivalent to saying, “I agree to let you my property for four years from the 1st October, 1882, at the above rent,” words which in the absence of anything in the instrument evincing an intention to the contrary are sufficient to create an actual demise. It was said that the circumstance of the document providing for a *pucká* agreement to be drawn by the lessor, and stamped and registered at the lessee’s expense, showed that the parties were only contending for a future formal lease. But although such a proviso has an important bearing on the question whether an actual demise was intended, still it has been often ruled that where words of present demise have been used, the question must depend on the paramount intention of the parties—*Jones v. Reynolds*⁽¹⁾ and *Chapman v. Towner*⁽²⁾. Now, here the agreement, which is dated the 8th October, 1882, provides that the lease was to commence from the 1st October—a date already passed, that the rent was to commence from that day, and the rent then due to be paid by next day. This shows clearly that the defendant was regarded as tenant for four years from the 1st October, 1882, subject to a right of forfeiture in the lessor if the Rs. 500 were not paid next day. We think, therefore, that under section 17 of the Registration Act III of 1877 this document ought to have been registered; and that not having been registered it was not admissible in evidence under the provisions of section 49.

It was suggested that there was some collateral purpose for which this document might be admitted in evidence. I cannot, however, see any such purpose. If admitted at all, it is admitted for the purpose of proving the terms of a transaction affecting the property, and for that purpose it is clearly inadmissible.

(1) 1 Q. B., 506, 516.

(2) 6 M. & W., 104.