1892
MARCH 2.

APPEL-
LATE
CIVIL.

17 B. 232.

The only other question which can be raised on the evidence is, whether the price for which the property was sold was so grossly inadequate as to be evidence of fraud practised on the vendor. We do not think that was the case. The property would not probably have been let for more than Rs. 250 per annum. That rental capitalized at 16 per cent. subject to a deduction of 10 per cent. for repairs would give Rs. 3,400 as the value of the property, and it was sold for Rs. 2,000. The defendant having failed to establish the defence actually set up, and the only grounds on which the case has been argued before us having also failed, we confirm the decree of the Court below with costs.

Decree confirmed.

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17 B. 235.

[235] APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

JOHARMAL (*Original Plaintiff*), *Appellant v.* TEJRAM JAGRUP (*Original Defendant*), *Respondent.** [7th March, 1892.]

Registration—Partnership—Mortgage of land to a firm—Dissolution of firm—Division of assets among partners—Letters of one partner to another transferring to the latter the share of the former in the assets of the firm, including the mortgages, but not mentioning them—Necessity of registering such letters—Evidence—Registration Act III of 1877, ss. 17 and 49—The words "document" and "instrument" in the Registration Act.

By two mortgage-bonds, dated, respectively, 25th July, 1866, and 13th September, 1870, certain lands were mortgaged to a firm of money-lenders at Khadkala, carrying on business under the style of Gangaram and Mayaram. There were four partners in the firm, *viz.*, Gangaram, Mayaram, Panji and Sadaram. In 1874 Gangaram retired from the firm, and wrote three letters, the effect of which was to transfer his share in the partnership to Panji and Sadaram. In 1878 the shop was closed, and the partners divided the assets of the firm. The two mortgages fell to the share of Sadaram. Subsequently Sadaram died, and the plaintiff, his son, inherited his property and took possession of the mortgaged lands. These lands were afterwards attached in execution of a money decree against one of the mortgagors (defendant No. 1). The plaintiff objected to the attachment, but his objection was disallowed, and the property was sold in execution and purchased by defendants Nos. 2 and 3. The plaintiff then filed this suit to establish his rights under the two mortgage-bonds. The defendants contended that the plaintiff had no interest in the mortgages, and was not entitled to sue. The plaintiff relied (*inter alia*) in support of his title upon the letters (A, B and C), whereby Gangaram had transferred his share in the assets of the firm to his (the plaintiff's) father Sadaram. These letters were objected to as inadmissible in evidence, not having been registered.

Held, that, independently of the letters, there was evidence to show that the plaintiff's father Sadaram was a partner in the firm, and that as such partner the mortgages in question fell to his share at the final division of assets. The position of Sadaram as a partner being once established, his right to the property followed by operation of law, and no other proof of title was required.

Per JARDINE, J.—"To lay down that the three letters in question, which deal generally with the assets moveable and immoveable, without specifying any particular mortgage or other interest in real property, require registration, would, I incline to think, in the present state of the authorities, go too far. It may be argued that such letters are not 'instruments of gift of immoveable property', but rather disposals of a share in a partnership of which the business is money-lending, and the mortgage securities merely incidental thereto."

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* Second Appeal No. 138 of 1891.

1892
MARCH 7.

APPELLATE CIVIL.

17 B. 235.

[236] *Per* TELANG, J.—"Although a partner's share does not include any specific part of any specific item of the partnership property, still where the partnership is entitled to immoveable property, such share does include an interest in immoveable property, and therefore every instrument operating to create or transfer a right to such share requires to be registered under our Registration Act (III of 1877). It is true that the authorities referred to apply, in terms, only to immoveable property owned by a partnership. But I am, on the whole, disposed to hold that the principle of those authorities applies to cases where immoveable property is held by a firm not in full proprietorship, but only by right of mortgage, ... Upon the whole I should, if necessary, have been disposed to hold that the letters in question not being registered were rightly treated by the Court below as being inadmissible in evidence to prove directly a transfer of the share of Gangaram in the partnership of Sadaram.

Per TELANG, J.—A perusal of various sections of the Registration Act seems to show that the Legislature has used the words "document" and "instrument" interchangeably.

SECOND appeal from the decision of W. H. Crowe, District Judge of Poona, in appeal No. 207 of 1889.

A firm of money-lenders carried on business at Khadkala under the style of Gangaram and Mayaram. The partners in the firm were Gangaram, Mayaram, Panji and Sadaram (plaintiff's father).

On the 25th July, 1866, certain land (Survey Nos. 39, 41 and 68) was mortgaged to this firm by Lakshman and Ramji bin Lakshman, and on the 19th September, 1870, certain other land (Survey Nos. 34, 37 and 110) was mortgaged to this firm by Ramji bin Lakshman. The mortgagees mentioned in the deed were the two partners, Gangaram and Mayaram, but they took the mortgages on behalf of the firm.

In 1874 Gangaram retired from the partnership, and went to his native place in Marwar. From there he sent three letters (Exs. A, B and C) by post to Sadaram, his former partner and the father of the plaintiff.

These letters were to the following effect:—

"I intend to become a *Sanyasi*. I have a shop at Khadkala. My share therein is worth Rs. 6,500. You should make a settlement of my debts by paying off my creditors. Remission to the extent of Rs. 3,000 should be given to my debtors. You should get the lands and houses transferred to your name. The property should be divided between you and Panji."

[237] Mayaram subsequently retired also from the firm, and Sadaram and Panji remained the sole surviving partners.

In 1878 the shop was closed. A division was made of the partnership property, and the two mortgages of 1866 and 1870 fell to the share of Sadaram, the plaintiff's father.

On Sadaram's death his son, the plaintiff, inherited his property, and took possession of the mortgaged lands.

Subsequently these lands were attached in execution of a money decree against the mortgagor, Ramji bin Lakshman (defendant No. 1). The plaintiff objected to the attachment, but his objection was disallowed, and the lands were purchased at the Court-sale by defendants Nos. 2 and 3.

The plaintiff then filed this suit for a declaration that the lands were not liable to attachment and sale in execution of the money decree, or that, if they were so liable, the defendants Nos. 2 and 3 (the auction-purchasers), were not entitled to possession without satisfying the plaintiff's mortgage lien under the two mortgage bonds of 1866 and 1870, respectively.

1892
MARCH 7.

APPEL LATE CIVIL.

17 B. 235.

The defendants pleaded (*inter alia*) that the plaintiff had no interest in the mortgages in question, and could not, therefore, sue.

The plaintiff relied on the above-mentioned letters (Exs. A, B and C) in support of his title.

The defendants objected to the admissibility of the letters, on the ground that they were neither stamped nor registered.

The Subordinate Judge overruled this objection, admitted the letters in evidence, and passed a decree in plaintiff's favour.

On appeal the District Judge was of opinion that the letters in question were inadmissible for want of stamp and registration, and as they were the only proof of plaintiff's title, he held that the suit must fail. He, therefore, reversed the decree of the Subordinate Judge, and rejected the plaintiff's claim.

Against this decision the plaintiff appealed to the High Court.

M. B. Chaubal, for appellant.—The letters are admissible in evidence. They are not instruments creating any right, or [238] interest in immoveable property within the meaning of the Registration Act (III of 1877). They do not come within the definition of instrument: see Wharton's Law Lexicon. Such informal documents do not need registration. There is no provision in the Act making registration of such letters compulsory. Refers to *Waman Ramchandra* v. *Dhondiba* (1); *Oo Noung* v. *Moung Htoon Oo* (2); *Kedar Nath Dutt* v. *Sham Lal Khettry* (3). Even if they required registration to prove the transfer of one partner's share to another, they would be still admissible to show that the plaintiff's father was a partner in this firm. It is found by both the Courts below that the two mortgage bonds under which we held the property in dispute were passed to the firm, and were treated as part of the firm's assets, and that they eventually fell to the share of our father. Upon these facts we are entitled to a decree.

B. N. Bhajekar, for respondent.—The letters are inadmissible for want of registration and stamp. The words "I have given the ownership to you" show that the whole interest of one partner in the partnership property was transferred to another partner. And as part of the partnership property admittedly consisted of these lands mortgaged to the firm, these letters must be held to convey or transfer an interest in immoveable property. They therefore require registration. We do not admit that the mortgage-bonds were passed to the firm. They are passed to the individuals Gangaram and Mayaram personally and not on behalf of the firm.

JUDGMENT.

JARDINE, J.—Mr. Chaubal argued several points on behalf of the appellant-plaintiff. But as no issues were raised below about estoppel and adverse possession, and as the claim was not based on adverse possession, we refrain from dealing with these matters in second appeal.

The plaintiff claims the lands in suit under two mortgage-deeds executed by the owners in 1866 and 1870 respectively. His case was that these mortgages were in favour of a money-lending firm; that several changes of partners occurred, on which occasions these mortgages were treated as partnership property: that [239] the plaintiff's father, Sadaram, was admitted as a partner as evidenced by three letters dated 1874, A, B and C; that some time after this, Panji and Sadaram remained the only partners, and that, on a division between them, these two mortgages were

(1) 4 B. 126. (2) 13 C. 322. (3) 11 B.L.R. 405.

1892
MARCH 7.

APPELLATE CIVIL.

17 B. 233.

assigned to the share of Sadaram, and that by means of partitions after Sadaram's death they became the sole property of the plaintiff, who claims as mortgagee in possession.

The lands were attached by the first defendant in execution of decrees against one of the mortgagors, and the plaintiff did not succeed in raising the attachment.

Among other pleas the defendants in both Courts below averred that the mortgages were not genuine and were not passed for consideration; but these questions were decided against them at the trial and have not been raised here.

The Subordinate Judge was evidently of opinion, as shown by his recital of the evidence of fact, that the rights over the property acquired by the mortgagees were for the purpose of the partnership business. It would appear that upon this part of the judgment an issue was raised in the District Court, whether the plaintiff was entitled to sue alone. The District Judge found this issue in the affirmative. It has been faintly argued in the present appeal that the facts do not show that the mortgages were partnership property. It may be that, if we were at liberty to go into all the facts, the point would require consideration (see Lindley on Partnership, Book III, chap. 4, s. 2, and Cunningham and Shepherd's Indian Contract Act under s. 253), but we do not think this arises in second appeal. It must also be taken as a fact found below that the plaintiff is the only remaining partner.

With reference to the question whether the letters transferring the property required registration, I may here state my opinion that the mortgage transactions about the immoveable property in suit were ancillary to the trade of money-lending—*Steward* v. *Blackeway* (1). The Subordinate Judge held that the letters A, B and C were admissible in evidence, but the District Judge has **[240]** held them inadmissible under the Registration Law, Act VIII of 1871, s. 17. Act XVIII of 1869, sch. I, art. 13, he also observes, required that they should be stamped. But under s. 34 of the present Stamp Law, Act I of 1879, this omission to stamp is immaterial, the documents having been admitted in evidence by the Subordinate Judge—*Garpadapa* v. *Naro* (2); *Punchanund Dass Chowdhry* v. *Taramoni Chowdhrain* (3); *Ramasami* v. *Ramasami* (4).

We have next to consider whether the documents are such as required registration under s. 17 of Act VIII of 1871. It is contended for the respondents that these documents constitute an instrument of gift of immoveable property, as was evidently held by the District Judge. The appellant's pleader refers us to the doubts expressed by Westropp, C. J., in delivering the judgment of the Full Bench in *Waman* v. *Dhondiba* (5) as to the extent of the meaning of the word *instruments* in the section we have to construe. This point had been argued, and the definition of instrument in Wharton's Law Lexicon as a "formal legal writing" quoted; and the judgment notices that no provision appears to have been made for registering a contract lying in letters, similar to the provisions in the Stamp Acts with reference to an agreement lying in letters or those in the Registry Acts of Parliament where the conveyance or security is contained in more writings than one. I concur with my brother Telang, however, in distinguishing the present case on the ground that the letters A, B and

(1) L.R. 4 Ch. 603. (2) 13 B. 493. (3) 12 C. 64.
(4) 5 M. 220. (5) 4 B. 126 (139).

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

C are rather repetitions of each other than a series in which each is required to help the others in order to spell out the disposition which the retiring partner meant to make of his immoveable property, being assets of the firm. *Oo Noung* v. *Moung Htoon Oo* (1), which follows *Kedar Nath Dutt* v. *Sham Lall Khettry* (2), was also cited to us. It was contended for the appellant that the three letters were admissible at any rate to show how the mortgagee's rights, being partnership property, came to the appellant's share. I will consider this point later.

[241] The cases cited to us on the question of registration, and mentioned above, do not help much on the construction of s. 17 of the Act; and I have not found any reported Indian case in point. *The Menglas Tea Estate case*(3), where the question was whether the document was a transfer of a lease or a conveyance of a share of a partnership, is really an interpretation of arts. 21 and 60 of the Stamp Act I of 1879, and leaves unnoticed the equitable doctrine discussed in the English cases to which in these judgments we refer, although not one of them has been cited in the arguments. The doctrine is stated in Lindley on Partnership, (5th Ed.), p. 343, in the following terms:—"From the principle that a share of a partner is nothing more than his proportion of the partnership assets after they have been turned into money and applied in liquidation of the partnership debts it necessarily follows that, in equity, a share in a partnership, whether its property consists of land or not, must, as between the real and personal representatives of a deceased partner, be deemed to be personal and not real estate, unless indeed such conversion is inconsistent with the agreement between the parties." At p. 347 the learned author states: "It follows, however, from this doctrine, that probate duty and legacy duty are payable in respect of the share of a deceased partner in partnership real estate: and a partner's share in such estate is clearly within the Charitable Uses Act—9 Geo. II, c. 36."

As to the application of the doctrine to cases on the statutes relating to Probate and Legacy Duties this statement is supported by *Attorney-General* v. *Brunning* (4), *Forbes* v. *Steven* (5), *Attorney-General* v. *Hubbuck* (6). Thus the share in partnership is made liable for probate duty, following the rule laid down in *Darby* v. *Darby* (7) that "if partners purchase land merely for the purpose of their trade, and pay for it out of the partnership property, that transaction makes the property personalty and effects a conversion out and out;" or, as remarked by Bowen, L J., [242] in *Attorney-General* v. *Hubbuck* (6), this doctrine of conversion necessarily affects partnerships: partnership property is that which is held by the partners for the purpose of the partnership, of carrying on the adventure of the partnership; and must be treated in the end as subject to a trust for sale, and therefore it is personal property.

There is another class of cases interpreting the Statute of Mortmain, 9 Geo. II, c. 36. In *Myers* v. *Perigall* (8), share in a joint stock Bank, the assets of which comprised land and mortgages, was held not to be within the Statute: and Lord St. Leonards proposed the following test, which, it is submitted in Clerke and Humphry's Sales of Land, p. 12, seems to be equally applicable to the Statute of Frauds:—"The true way to test it would be to assume that there is real estate of the company

(1) 13 C. 322. (2) 11 B.L.R. 405. (3) 12 C. 383.
(4) 8 H.L. Cases, 243. (5) L. R. 10 Eq. 178.
(6) 10 Q.B.D. 488 and in Appeal 13 Q.B.D. 275 (289). (7) 3 Drew. 495.
(8) 2 D.M. & G. 599.

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

vested in the proper persons under the provisions of the partnership deed. Could any of the partners enter upon the lands, or claim any portion of the real estate for his private purposes? They would have no right to step upon the land: their whole interest in the property of the company is with reference to the shares bought, which represent their proportions of the profits." He goes on to say: "In short, a member has no higher interest in the real estate of the company than that of an ordinary partner seeking his share of the profits out of whatever property those profits might be found to have resulted." This case is followed in *Entwistle* v. *Davis* (1), where Sir W. Page-Wood, V.C., held that shares in land companies were not an interest in land within the Statute 9 Geo. II, c. 36. The Vice-Chancellor said: "Since the decision in *Myers* v. *Perigall*, the test is not whether the holders of the shares can in some sense be said to be interested in land, but whether the share is such a share as, under any ordinary state of circumstances, can result to him in the shape of land. In other words, is the right of a shareholder merely a right to call for his share of the profits, and not for a specific part of the land itself?" In *Attree* v. *Hawe* (2), Hall, V.C., held the debenture stock of a railway company to be within the Statute; but this decision was reversed on appeal, where in [243] the judgment James, L.J., states the policy of the Act and uses the following language as to the decision:—"It has been held that a share or interest in a trading partnership or business, incorporated or unincorporated, is not within the prohibition, although it may have, as indeed almost every business has, some interest in land with which or on which it is carried on, or although it may have among its assets any amount." But then in the year 1880, in *Ashworth* v. *Munn* (3), the same learned Judge qualifies this language as too general; and the latter case interprets *Myers* v. *Perigall* so as to restrict its effect to shares in companies, corporate or unincorporated, which companies have a perpetual or continuing existence, notwithstanding the changes in the persons who constitute the partnership, and which shares can be realized not only by winding up the whole concern, but by selling them in the market. Ordinary partnerships are thus excepted from the rule about charitable gifts laid down in *Myers* v. *Perigall*. In *Ashworth* v. *Munn*, the Lords Justices followed the decision of Lord Chancellor Cairns in *Brook* v. *Badley* (4), a case of 1868, where it was held that a legacy payable out of personalty and of the proceeds of the sale of real estate is an interest in land within the Statute of Mortmain, and cannot, whilst it remains unpaid, be bequeathed by the legatee for charitable purposes. Lord Cairns said: "The case, as I have described it, seems to me to be exactly within the 3rd section of the Mortmain Act (9 Geo. II, c. 36) which enacts that all gifts, grants, conveyances, appointments, assurances, transfers and settlements whatsoever of any lands, tenements or other hereditaments, or of any estate or interest therein, to any charitable use shall be void." I pause here to notice the different language of the clause of the Registration Act we have to interpret—"Instruments of gifts of immoveable property," which are among the documents "required by s. 17 to be registered," and which s. 48 makes inadmissible "as evidence of any transaction affecting such property," "unless it has been registered in accordance with the provisions of this Act" (VIII of 1871). In *Ashworth* v. *Munn* a testator, who was a partner in a mercantile firm, gave the proceeds of the sale of his share of certain real estate which was

(1) L. R. 4 Eq. 272.
(2) 9 Ch. D. 337.
(3) 15 Ch. D. 368.
(4) L. R. 3 Ch. 672.

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

[244] held as partnership property to charitable uses. Vice-Chancellor Malins held that although the real estate must as between the real and personal representatives be treated as personal property, yet it was quite a different question whether the proceeds could be applied to charitable purposes, and he decided "that any property derived from the sale of freehold estate is within the Statute of Mortmain, and cannot be applied for the benefit of the charities mentioned in the will." The Lords Justices in appeal affirmed the decision. The reasons given require close attention. Lord Justice James says at p. 367 of the Report: "With some fluctuation of opinion during the time of the argument, it appears to me at last that we must arrive at the conclusion that the case is hit by the words of the Statute commonly called the Statute of Mortmain." Then after discussing *Myers* v. *Perigall* he lays stress on the words "any charge or incumbrance." "Those very words are in the Statute, and were put in for the purpose of preventing possible evasions, some instances of which I attempted to give in the judgment in *Attree* v. *Hawe*." Then he supposes a case where the partner has a right in property which "in one sense is pure personalty, because it is personalty as between the real and personal estate, still it is exactly that which comes within the very words of the Statute." Lord Justice Brett could not but marvel at the great length to which the construction of this Mortmain Act has been carried. "It seems to me," he says, "to have been carried much further than the reason of its enactment suggested or authorized; but the construction has been carried to this great length by authorities which are binding upon us and which we have no right to dispute." He felt bound to follow *Brook* v. *Badley*. He held that the exceptional cases on corporations did not apply, and ended as follows on the case before him:—"It comes within the proposition laid down by the cases, that where it may be necessary to deal with the land in order to effectuate the devise in favour of the charity, the gift is void. Therefore it seems to me that the case of an ordinary partnership is not within the exceptional rules, but within the original rules, and therefore this decision is correct." The judgment of Lord Justice Cotton seems to me founded on considerations closer to those which arise on the words we are to [245] interpret. The question, he says, is not what the charity can take under this will, but what was the interest of the testator in the property which he attempted to devise to the charity. What the Act points at is the devise of land—that is, it prevents testators giving by their wills that which in them is land, or an interest in land, and what we have to consider really is, whether or no the interest of the testator was land or "any estate or interest in land, or any charge or incumbrance thereon." Then the Lord Justice dealing with the matter first without reference to any of the cases on the point considers whether there was or was not an interest for charge on land. "If a charge, then it was an interest." At p. 374, continuing the argument, he says: "At all events it is the right of the surviving partner, if he desires it, to say there shall be a sale, and, therefore, I say that the testator could not get his interest in this partnership or in this land, except either by special arrangement or by sale. Then when there was a sale, he would have a right to the proceeds of the sale of the land, and to have that paid to him, and until there was a sale he would have a claim against the land; and as against also the other assets of the partnership, whether you call it lien or charge, or anything else, to secure to him what was ultimately coming to him. It is, in my opinion, independently of any decision, an interest in land, and we cannot but say that a gift of his interest in the partnership property, being land, is a gift of an

interest in land within the 3rd section of the Statute of Mortmain." Then he relies on *Brook* v. *Badley* as authority applicable to partnership property as well as to other property.

It appears to me that the decisions on the Statute of Mortmain proceed generally on the words of the Statute and on the mischief at which it strikes: and as the Statute being held to be remedial is liberally and beneficially interpreted so as to suppress the mischief and advance the remedy—*Jefries* v. *Alexander* (1)—we must be cautious in using these decisions as guides to the construction of a Registration Act which is to be more strictly construed.

There is another class of decisions which are usually cited in dealing with Probate Duty and Mortmain cases, I mean those **[246]** about equitable freeholds qualifying for the electoral franchise. I pass over *Baxter* v. *Brown* (2), which is discussed in *Watson* v. *Spratley* (3) (a case on the Statute of Frauds) and referred to in *Watson* v. *Black* (4), as a case that has been sometimes doubted and sometimes distinguished. *Watson* v. *Black* follows *Bennett* v. *Blain* (5), which dealt with shares in a corporation. In *Watson* v. *Black* the associated, but in no way incorporated, partners had vested the freeholds in their trustees free from any equitable interest in the individual members in the land itself and these partners had an interest in the profits only. It was therefore held by Coleridge, C. J., and Grove and Cave, JJ., that they had no equitable interest in the freeholds. In the case before us there is no such vesting, and perhaps *Watson* v. *Black* may be used as tending to show that the letters purported to convey an interest in immoveable property.

I have found no case in point decided on the English or Irish Registry Acts, and will now turn to those which interpret the Statute of Frauds, which, as its author Lord Nottingham remarks in *Ash* v. *Abdy* (6), restrains the common law, and ought therefore itself to be restrained by exposition. The words in s. 4 are "any contract or sale of lands, tenements or hereditaments,, or any interest in or concerning them." *Watson* v. *Spratley* (3) is authority that shares in a mine worked on the cost book principle do not constitute an interest in land within the section, in the absence of evidence that the shareholders take a direct interest in the freehold. The partnership was treated as similar to an incorporated Joint Stock Company. See Sugden on Vendors and Purchasers (14th Ed.), 127, commenting on *Boyce* v. *Greene* (7). In *Gray* v. *Smith* (8) the partnership assets included leaseholds. Kekewich, J., held that the agreement for the dissolution of the partnership came within s. 4, on the ground that the party sought to be charged must part with and assign to others an interest in land. He thus distinguished the agreement in **[247]** question from an agreement to form a partnership which may be by parol—*Forster* v. *Hale* (9); *Dale* v. *Hamilton* (10)—even when the partnership was to deal with land. The Lords Justices upheld the decision. Lord Justice Cotton notes that there was no argument on the point whether the agreement was within s. 4, and says: "As at present advised, I agree with Mr. Justice Kekewich that the agreement is within the 4th section, so that a memorandum in writing is necessary." No reasons for their opinion are given by the Lords Justices.

(1) 8 H. L. C., 628, 646, 656.
(2) 7 M. & G. 198.
(3) 10 Exch. 222.
(4) L. R. 16 Q. B. D. 278.
(5) 15 C. B. (N. S.). 518 = 33 L. J. (C. P.) 63.
(6) 3 Swan 664.
(7) Batty's Irish R. 608.
(8) L. R. 43 Ch. D. 208.
(9) 3 Ves. 696=5 Ves. 308.
(10) 5 Hare 369.

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

It may be that the tendency of decisions in England is to bring partnership agreements conveying interests in land among other assets within s. 4 of the Statute of Frauds, as has been done under the Statute of Mortmain. But the authorities do not appear to me sufficiently numerous and clear to make it easy to apply them to the Registration Act of India (III of 1877). The case of *Forster* v. *Hale* (1) decided by Lord Chancellor Rosslyn has not been overruled. There one of four partners in a bank took with three strangers a lease of a colliery as tenants-in-common. The Lord Chancellor said, p. 309: "The question of partnership must be tried as a fact, and as if there was an issue upon it. If by facts and circumstances it is established as a fact that these persons were partners in the colliery in which land was necessary to carry on the trade, the lease goes as an incident. The partnership being established by evidence upon which a partnership may be found, the premises necessary for the purposes of that partnership are by operation of law held for the purposes of that partnership." This was in answer to the objection that a signed writing was required by the Statute of Frauds. Vice-Chancellor Wigram in *Dale* v. *Hamilton* carried the doctrine further, as pointed out in Lindley on Partnership and in Story on Contracts (5th Ed.), s. 83, note, going according to Sir N. Lindley a long way towards repealing the Statute of Frauds.

In determining whether transfers of shares of partnerships, which hold, among other assets, interest in immoveable property, require registration, a Court must be influenced by the policy of [248] the Act as gathered from its language and provisions and those of the earlier legislation. But on this part of the subject there has been no argument, the provision in s. 17, which excepts shares of Joint Stock Companies from cls. 2 and 3, not having even been noticed. To lay down that the three letters in question, which deal generally with the assets, moveable and immoveable, without specifying any particular mortgage or other interest in real property, require registration, would, I incline to think, in the present state of the authorities, go too far. I am apprehensive of the inconvenience which such a decision would cause to traders, especially to the money-lenders, who all over the country form firms and advance money on land. It may be argued, as in *The Menglas Tea Estate case*, that things ought to be called by their right names; and that such letters are not "instruments of gift of immoveable property," but rather disposals of a share in a partnership of which the business is money-lending and the mortgage securities merely incidental thereto.

For another reason, based, however, on somewhat the same consideration, I am of opinion that we should reverse the District Judge's decree. I agree with my learned brother, whose judgment I have had the advantage of perusing, that the plaintiff was entitled to give parol evidence that the two mortgages in question were the property of the partnership, and that he is now the sole remaining partner—*Forster* v. *Hale*. We may further find that the plaintiff has proved these facts.

I concur as to the nature of the relief to be decreed, by giving the plaintiff a declaration. We must now reverse the decrees of the lower Courts and pass a new decree. The respondents to pay the plaintiff's costs of the suit and both appeals.

(1) 3 Ves. 696=5 Ves. 308.

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 285.

TELANG, J.—The first question argued on this appeal was whether the Exs. marked A, B, and C are or are not admissible in evidence, they not having been registered. The decision of that question raises several subordinate questions. The documents referred to are, in form, letters, as stated by the District Judge, addressed to Sadaram, the father of the plaintiff, by one Gangaram *alias* Godidas, who was one of the original mortgagees in the mortgage-deed under which the plaintiff claims. For the [249] appellant, the plaintiff, it was argued, that the mortgages were made to the firms of which Gangaram was a member, while the vakil for the respondents has contended that the mortgages must be taken to have been made, not to any firm, but to the individuals Gangaram and Mayaram and Panji named in the mortgage-deeds. Looking, however, at the fact that the mortgagees are described in those deeds respectively as "Gangaram and Mayaram, a firm of Khadkala," and as "Gangaram and Panji, a firm of Khadkala," that the full names of Gangaram and Mayaram and Panji are not given in those deeds, and that Gangaram and Mayaram and Gangaram and Panji are found to have been actually the names of the respective firms, it would be difficult to hold that the construction contended for on the part of the respondents is correct. That construction, evidently, was not the one adopted by the Subordinate Judge; and there is nothing in the judgment of the District Judge to show that he dissented on this point from the Subordinate Judge's opinion, but rather the contrary. Further, we may the more readily adopt the appellant's argument about the firms being the beneficiaries under the mortgages, as they were so treated by the mortgagees themselves in their subsequent transactions *inter se*, about the factum of which no dispute whatever has been raised on behalf of the respondents, and by which, as pointed out by the Subordinate Judge, the mortgages, after having been included in the successive divisions among the partners, came ultimately to the share of the father of the present plaintiff. In dealing, therefore, with the point of the admissibility of the documents referred to, it must be assumed that the mortgages in question were made to the partnership and formed a part of the assets of the partnership.

Now there can be no doubt that the partnership by virtue of those mortgages owned a certain interest in immoveable property—*Sparling* v. *Parker* (1) and *Gopal Narayan* v. *Trimbak Sadashiv*(2). And the question is, whether the share of Gangaram, as one of the members of that partnership, must also be deemed to include an interest in immoveable property, or whether the letters do, in fact, deal with such an interest, be the same properly [250] included in that share or not. Upon the latter point there is not apparently much room for doubt. For although the letters are, as might be expected, written altogether in inartificial language, the references made in them to the immoveable property amount to no more than a direction about its transfer from the name of the writer to the names of plaintiff's father and Panji. The words, at all events, do not themselves create an interest in immoveable property. Nor is it apparently the intention of the letters to create any such interest—except in so far as it results from the transfer of the share in the partnership, which doubtless is the principal matter dealt with in the letters. Although there are certain rather obscurely worded sentences in them, their effect taken altogether I find to be this: that Gangaram transferred his share in the partnership, subject to certain directions given, to Sadaram and Panji; and in order to carry out

(1) 9 Beav. 450. (2) 1 B. 26

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

the transfer fully, so that his name might no longer be used in any way in any of the transactions of the firm, he directed that all the property, including immoveables, standing in his name should by the aid of the power of attorney already executed by him be transferred into the name of Sadaram.

The question therefore is neatly raised in this case—whether a share in a partnership which possesses a mortgage of immoveable property among its assets includes an interest in immoveable property within the meaning of the Registration Acts. The question does not appear to have been decided in any of the Indian Courts. The case of *Oo Noung* v. *Moung Htoon Oo* (1), which was the only authority cited to us in the arguments on this part of the case, related to a letter evidencing an equitable mortgage, and was decided on the authority of the familiar case of *Kedar Nath Dutt* v. *Sham Lall Khettry* (2) before Sir R. Couch. That case, however, has no application on the present point. The case of *In re The Kondoli Tea Co.* (3) was apparently a case of part-owners, not partners, and there all the owners jointly conveyed the immoveable property in question. The point there also was thus very different from the one we have here to deal with. The [251] earlier case of *The Menglas Tea Estate*(4) is also not in point. That, like the case of the Kondoli Tea Co., arose on the Stamp Act, and the only question there was whether the document of conveyance was a transfer of certain leases only, or whether it was a transfer of the whole of one partner's share in the partnership to which the leases belonged. The cases, thus being inapplicable, we must deal with the question on general principles as one of first impression.

Now, it is doubtless thoroughly well established that, in the language of Lord Justice Lindley, "what is meant by the *share* of a partner is his proportion of the partnership assets after they have been all realized and converted into money, and all the debts and liabilities have been paid and discharged. This it is, and this only, which on the death of a partner passes to his representatives or to a legatee of his share; which under the old law was considered as *bona notabilia*; which on his bankruptcy passes to his trustee; and which the Sheriff can dispose of under a *fi. fa.* issued at the suit of a separate creditor (5)." And in *Forbes* v. *Steven* (6), Sir W. James, then Vice-Chancellor, said: "It has long been the settled law of this Court, that real estate bought or acquired by a partnership for partnership purposes (in the absence of some controlling agreement or direction to the contrary) is, as between the partners and as between the real and personal representatives of a partner deceased, personal property, and devolves and is distributable and applicable as personal estate and as legal assets." And the learned Judge then went on to refer to *Darby* v. *Darby* (7) and *Myers* v. *Perigall* (8) as illustrating the doctrine so stated by him.

At first sight, this doctrine seems to lead logically to the conclusion, that a document effecting the transfer of a partner's share, which is thus a mere transfer of personalty, cannot be compulsorily registrable under the provisions of our Registration Act. It seems to me, however, that such a conclusion would not be quite correct. In the first place, Sir W. James only speaks of the equitable conversion "*as between the partners and as between* [252] *the real and personal representatives of the partner deceased*;" and Lindley, L.J., in another passage of his work (p. 347) says that the

(1) 13 C. 322. (2) 11 B.L. R. 405. (3) 13 C. 43.
(4) 12 C. 383. (5) Lindley on Partnership (5th Ed.), 339.
(6) L. R. 10 Eq. 178. (7) 3 Drew. 495. (8) 2 D. M. & G. 599.

doctrine "merely amounts to this, that on the death of a partner, his share in the partnership property is to be treated as money, not as land." This obviously would not affect matters either during the lifetime of a partner—Lindley, L.J., says in so many words that it has no practical operation till his death (1)—or as against parties strangers to the partnership, *e. g.*, the firm's debtors. Further, a mortgage debt also, in the view of English Courts of Equity, has long been treated as part of the mortgagee's personal estate. And those Courts have uniformly held from early times that "in all mortgages the money must go to the executor or administrator, and *not* to the heir of the mortgagee." This rule has been applied even where the mortgagee has entered into possession (2), and it has been decided that the mortgage does not, by virtue of such entry, become part of the mortgagee's real estate.

The rule in India has also been the same as in England. Yet it cannot be contended that an assignment of a mortgage does not, in the words of the Registration Act, purport or operate to create, assign or transfer an interest in immoveable property. The contrary has, in fact, been often held directly or indirectly in this Court—(See, *inter alia*, *Vasudev* v. *Rama* (3); *Gopal Narayan* v. *Trimback Sadashiv* (4); *Satra Kumaji* v. *Visram Hasgavda* (5); and *Ganpat Pandurang* v. *Adarji Dadabhai* (6)). It is therefore necessary in dealing with the question before us, to go beyond the proposition above set out from Lindley on Partnership, and to consider what is the nature of the rights which the several partners possess in and to the partnership property. Now, the general principle may here again be expressed in the language of Sir N. Lindley, who says that, "in the absence of a special agreement to that effect, all the members of an ordinary partnership are interested in the whole of the partnership property." And when it is remembered that a partnership firm is not a distinct *persona* in the eye of the law, but is only a **[253]** compendious mode of describing the group of individual partners, it seems to follow that any right or interest in immoveable property which is owned by the firm must be divided among the individual partners, whose fractional interests must make up the aggregate vested in the whole firm. Accordingly in *Farquhar* v. *Hadden* (7), where the testator by his will gave to his surviving partner "all my share of the leasehold premises in which my business is carried on," Sir W. James, L.J., said those words would carry "the interest which the testator had in this property at his death, namely, a right to a moiety subject to the application of the assets of the partnership in payment of the partnership debts." And Sir G. Mellish added: "It is said that that is an inaccurate description. I do not see that there is in it any substantial inaccuracy. He had an interest in the property subject to the payment of the debts, such an interest as a creditor of his might have taken in execution (8); that was the interest which he had, and that is what he leaves to his partner." Again in *Ashworth* v. *Munn* (9), which was a case of a testamentary disposition in favour of some charity of a partner's share in a mercantile concern, the Lord Justice James, after distinguishing between the case of corporations or

(1) Page 348.
(2) Fisher on Mortgage (4th Ed.), pp. 328-9; Coote (5th Ed.), 1141.
(3) 11 B. H. C. R. 149. (4) 1 B. 267. (5) 2 B. 97.
(6) 3 B. 313. (7) L.R. 7 Ch. 1.
(8) Cf. *Mayhew* v. *Herrick*, 18 L. J. (C. P.), 179, which arose on a *fi. fa.* executed against partnership goods.
(9) 15 Ch. D. 363 (369-70).

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

quasi-corporations and private partnerships (1), observed: "Now it appears to me that in a private partnership which has got land, it is difficult to say that the partner has not got an interest in land." And after discussing the nature of a partner's estate, and pointing out that the share of each of the partners is "not a share in any specific asset or any specific part of the assets real or personal," he went on to say, that "whatever is the amount coming due to that partner, that partner has an immediate or direct charge or incumbrance on that land for that very sum, and his right is to have the land sold for the purpose of realizing that charge or incumbrance which he has upon it." And finally he affirmed the order of the Vice-Chancellor "upon the simple ground that, if not an interest in land, it is at all events a direct charge on land." [254] Brett, L.J., in the same case said: "But when you come to the case of an ordinary partnership..... which holds land, one partner cannot dispose of his interest without the consent of the others, and supposing he dies, the partnership is at an end, and it may not be possible to ascertain his interest in the partnership without dealing with the land, which is the property of the partnership, and in which therefore he has an interest." And Cotton, L.J., remarked, that "we must consider whether this is not an interest or charge on land. If a charge, then it was an interest." And after discussing how the rights of partners would have to be worked out, he proceeded thus:—"It is, in my opinion, independently of any decision, an interest in land, and we cannot but say that a gift of his interest in partnership property being land, is a gift of an interest in land within the 3rd section of the Statute of Mortmain." All the members of the Court relied upon Lord Chancellor Cairns' decision in *Brook* v. *Badley* (2)—Cotton, L.J., expressly observing that the principle of that decision applied to a share in an ordinary partnership. Lord Cairns there had to deal with a will which gave the testator's real and personal estate to trustees with directions to sell the same, and after payment of his debts and certain legacies, to pay £ 3,000, part of the residue, to H. Hunt, from whom Miss Pargeter bought it. The Lord Chancellor, affirming the decision of Lord Romilly, M.R., held that the legacy forming part of Miss Pargeter's estate was an interest in land within the Statute of Mortmain. And having regard especially to the definition of immoveable property given in the Act, I cannot discover any reason for construing the phrases "immoveable property" or "any right, title or interest in immoveable property" in our Registration Act more narrowly than the words "any estate or interest in lands, tenements and hereditaments" used in the Statute of Mortmain (3). And it is to be remarked also that in all these cases the discussion has turned not so much on the signification of the words of the Statute, as on the nature of an individual partner's interest in partnership [255] property. And, therefore, I think that the cases on the Statute of Mortmain are of much value in reference to the point under consideration.

The latest case I have been able to find throwing light upon this question is the very recent case of *Smith* v. *Gray* (4), where Kekewich, J., held that a sale of a share in an ordinary partnership owning immoveable property fell within s. 4 of the Statute of Frauds, the words of which are "any interest in or concerning lands, tenements and hereditaments."

(1) Compare *Baxter* v. *Brown*, 7 M. and G. 198. (2) L.R. 3 Ch. 672.
(3) See also *Crawshay* v. *Maule*, 1 Swanst., 508, per Lord Eldon quoted in 7 Man. and Gr. 216.
(4) 43 Ch. Div. 208.

That particular point was not decided by the Court of appeal, but Cotton, L. J., expressed his concurrence in the opinion of Kekewich, J. It appears to me that these authorities lead to the conclusion, that where an ordinary partnership owns land for the purposes of the partnership, the interest of each member of the partnership, although not a share in any specific asset or specific part of the assets, and although it would by English law devolve as part of such member's personal estate, must nevertheless be held to be an "interest in immoveable property" within the meaning of our Registration Acts. The case of *Attorney General* v. *Hubbuck* (1) is not inconsistent with this view, as the result in that case, which arose on a claim for Probate Duty on the part of the Crown, could not have been affected by the circumstance that the personal asset dealt with in that case carried with it a right of realization out of real property. Nor is the still more recent case of *Watson* v. *Black* (2) an authority adverse to the conclusion above expressed, but impliedly at least supports that conclusion, because the Court in that case held that on the true construction of the deeds relating to the property there in question, the individual members of the Stock Exchange had divested themselves of the Stock Exchange property, and vested it in trustees "*free from any equitable interest*" in themselves, retaining "an interest in the profits of the concern only," and, *therefore*, that they were not entitled to the benefit of the county franchise. The implication seems to be pretty clear, that, if there had not been any such divesting, the members *would* have had an equitable [256] interest sufficient to warrant their claim. There is no such divesting in the present case. On the other hand, it seems to me that the conclusion above stated is the only one which can be reconciled with such a case as that of *Baxter* v. *Brown* (3), in which it was held that if the shares of the partners in the real property belonging to the partnership are of sufficient value, the partners may, notwithstanding the equitable doctrine of conversion of partnership realty into personalty, lawfully claim the right to vote at elections of Members of Parliament. There is no doubt that that case has sometimes been dissented from, but the latest decisions show that the conflict of opinion is not in reference to any point here relevant. And it is still cited as good law by Lindley, L. J., in his last edition (4). On the whole, therefore, I am disposed to hold, that although a partner's share does not include any specific part of any specific item of the partnership property, still where the partnership is entitled to immoveable property, such share does include an interest in immoveable property, and therefore every instrument operating to create or transfer a right to such a share requires to be registered under our Registration Act. It is true that the authorities above referred to apply, in terms, only to immoveable property owned by a partnership. But I am, on the whole, disposed to hold that the principle of those authorities also applies to cases where immoveable property is held by a firm, not in full proprietorship, but only by right of mortgage (Comp. Fisher on Mortgages, 4th Ed., p. 512, as to the somewhat analogous case of sub-mortgages). In this particular case, I may mention that the property, in fact, was in the enjoyment of the mortgagees' firm ever since the mortgage, and that it is now in the possession of the plaintiff.

But, then, it is said that these letters and similar informa-documents are not instruments at all within the meaning of the Registration Act, and

(1) 13 Q. B. D. 275.
(2) 16 Q. B. D. 270.
(3) 7 Man & Gr. 198.
(4) See p. 348.

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

reliance is placed for that argument on certain remarks made in the course of the judgment of the Full Bench in *Waman* v. *Dhondiba* (1) delivered by Westropp, C.J. Those remarks, however, it is to be noted, amount to no more than the expression of a doubt, and are made only with reference [257] to "ordinary letters in a negotiation for a purchase of immoveable property." We have not here to deal with any letters of that character, and nothing that we may decide in this case will in any way affect the doubts expressed by the Full Bench. Here we have not even to spell out a grant or contract from any correspondence between two parties; we have only to deal with three letters written by one and the same person to the other party to the transaction, and each in substance merely reiterating what is said in the others. The cases referred to in the argument in *Waman* v. *Dhondiba* show that in spite of the definition given by Wharton, which is referred to by Westropp, C.J., letters have been spoken of by eminent Judges and masters of the English language like Sir J. Knight Bruce, and I think I may add Sir W. Grant, as "instruments." And I should not be prepared to lay it down, that while a document which runs in the form—"This indenture made between A, B of the one part and C, D of the other part" must be registered; the same document need not be registered if it runs in some form like this: "To A. B., Esquire, Dear Sir ... ... yours faithfully, C. D." I think that the question cannot be properly decided with reference to circumstances like this. I think, too, that a perusal of various sections of the Registration Act seems to show that the Legislature has used the words 'document' and 'instrument' interchangeably. And, further, it is obvious, that if it is once held that a letter, even though it evidences a transaction relating to immoveable property of the nature described in s. 17 of the Registration Act, is, notwithstanding s. 49, valid to effectuate such transaction even without registration, merely on the ground that it is in form a letter, the whole of the Registration Act may be practically rendered inoperative with the greatest ease. One often meets with vernacular assurances, wills, deeds of gift and deeds of sale, which are cast into the form of letters, but intended to operate as formal legal instruments. See (*inter alia*) *Ramasami* v. *Ramasami* (2); *Safdar Ali Khan* v. *Lachman Das* (3). Upon these grounds I have come to the conclusion, that we are not bound to give such effect to the remarks of Westropp, C.J., above alluded to, as to hold that the letters [258] before us need not be registered on the simple ground that they are letters.

But it was further argued that the letters in question do not themselves operate to transfer any right whatsoever, as they expressly leave it to the addressees to arrange as they please about the matters dealt with in the letters. I do not, however, think that that is the true meaning of the passage referred to. I understand it to mean merely that the mode of carrying out the writer's directions is left to the discretion of the addressees, the actual transfer of interests itself which they direct, being, however, in no way touched by that circumstance. Upon the whole, therefore, I should, if necessary, have been disposed to hold that the letters in question not being registered were rightly treated by the Court below as being inadmissible in evidence to prove directly a transfer of the share of Gangaram in the partnership to Sadaram. It is unnecessary to consider in this case whether the transfer might be proved by means of the letters in question only as a transfer of personalty, foregoing the charge in respect of it upon

(1) 4 B. 126. (2) 5 M. 115. (3) 2 A. 554.

1892
MARCH 7.
APPELLATE CIVIL.
17 B. 235.

the immoveable property, as was allowed to be done in the case of a transfer of a decree ordering a sale of immoveable property in the case of *Koob Lall Chowdhry* v. *Nittyanund Singh* (1). Such a use of the letters, even if allowable, will be of no avail to plaintiff, who to succeed in this case must show a right to the property itself.

The District Judge has treated his finding on the admissibility of the letters as conclusive of the case. He says in his judgment that the plaintiff relies on no other evidence of title than these letters; and, again, that "there being no other evidence of plaintiff's title besides these letters, I am of opinion that his suit must fail." But on this point I am unable to agree with him. It is, I think, quite clear, that even by English law, and in spite of s. 4 of the Statute of Frauds, a man may be admitted as a member of a partnership without any document whatever, and this even though the partnership is formed expressly to deal in land (2). In the case of *Gray* v. *Smith* (3), [259] already cited on another point, Mr. Justice Kekewich laid that down, following *Forster* v. *Hale* (4) and *Dale* v. *Hamilton* (5). And, again, there appears to be no doubt, that the fact of partnership may, if necessary, be proved without producing the deed of partnership (6). It seems to me, therefore, that it is open to the plaintiff to rely on the evidence referred to by the Subordinate Judge, to show that his father was at first admitted as a partner, and subsequently treated as a partner, and that as such partner the mortgages in question here ultimately fell to his share at the final division. And this the plaintiff can show, without even producing the letters dealt with above, or, if necessary, the letters may probably be admissible as either corroborating the plaintiff's story, or as rendering it probable that his father was, in fact, admitted as a partner. If and when the position of the plaintiff's father as a partner is thus established, his right to the property follows, as the Lord Chancellor said in *Forster* v. *Hale*, by operation of law, and no other proof of title is required. In this case, there appears to be no room for doubting that the plaintiff's father was, in fact, admitted as a partner. The District Judge, it seems pretty clear, was on that point of the same opinion as the Subordinate Judge. And, therefore, I think it is not necessary, as it would otherwise have been, to send the case down to the Court below for a finding on that point. But assuming that Sadaram did become a partner, and that by virtue of the divisions between the partners and the other transactions referred to by the Subordinate Judge the plaintiff is now the rightful representative of the original mortgagees, I think he is clearly entitled to relief in this suit. And it is unnecessary to consider any of the other points raised by Mr. Chaubal in argument in support of the appellant's case.

The question, however, remains what is the relief which the plaintiff is now entitled to. As mortgagee in possession his right was to have the attachment on the property itself removed—*Kassirav* v. *Vithaldas* (7). But it appears that the attachment was not removed by the Courts below, and the property was in [260] fact sold. Under these circumstances, the plaintiff is now entitled only to a declaration that he has a good and valid mortgage on the property, the subject-matter of the suit, for the amounts

(1) 9 C. 839.
(2) Lindley on Partnership (5th Ed.). 81—2 (where *Dale* v. *Hamilton* is said to have gone to the extreme verge of the law).
(3) 43 Ch. Div. 208. (4) 3 Ves. 696=5 Ves. 308. (5) 5 Hare 369.
(6) Tayler on Evidence, pp. 377—8; Field on the Indian Evidence Act, p. 408.
(7) 10 B.H.C.R. 100.

1892 MARCH 7. APPELLATE CIVIL. 17 B. 235.

justly due and owing on foot of the mortgages of the 25th July 1866 and 19th September 1870 respectively, and that by virtue of the execution sale to the defendants Nos. 2 and 3, they are only entitled to the said property subject to such mortgages. There is no prayer for an account of the mortgages to be taken, or for a foreclosure or sale. And accordingly no relief of that nature can be given in the present suit. I am therefore of opinion that the decree of this Court must be that the decree of the District Judge should be reversed, and a declaration made as above set forth, and that the respondents should pay the appellant the costs of the suit and of both appeals.

Decree reversed.

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17 B. 260 (F.B.).

FULL BENCH—APPELLATE CRIMINAL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Parsons, and Mr. Justice Telang.

QUEEN-EMPRESS *v.* BANA PUNJA AND OTHERS.*

[19th December, 1892.]

Penal Code (Act XLV of 1860), ss. 71, 148, 149, 326—Sentence—Separate sentences for rioting and grievous hurt.

When a prisoner is convicted of rioting and of hurt, and the conviction for hurt depends upon the application of s. 149 of the Indian Penal Code, it is not illegal to pass two sentences, one for riot, and one for hurt, provided the total punishment does not exceed the maximum which the Court might pass for any one of the offences.

When, however, the accused is guilty of rioting, and is also found to have himself caused the hurt, he may be punished both for rioting and for hurt.

In such a case the total punishment can legally exceed the maximum which the Court might pass for any one of the offences.

Queen-Empress v. *Ram Sarup* (1) approved.

[N.F., 11 Cr.L.J. 415 (416) = 6 Ind. Cas. 880 = 3 S.L.R. 224; F., 25 Ind. Cas. 633 = 17 O.C. 184.]

THIS was a reference to the Full Bench.

[261] The accused Bana Punja and nine others were committed to the Court of Session on the following charges:—

(1) For having on the 9th June, 1891, joined an unlawful assembly armed with deadly weapons (Penal Code, s. 14).

(2) For rioting armed with deadly weapons (Penal Code, s. 148).

(3) For voluntarily causing grievous hurt by dangerous weapons (Penal Code, s. 326).

The Joint Sessions Judge of Kaira convicted all the accused of the offence of voluntarily causing grievous hurt with dangerous weapons, and sentenced, under ss. 326 and 149 of the Indian Penal Code, accused No. 1 to three months' rigorous imprisonment and the rest to six months' rigorous imprisonment.

Accused Nos. 1, 5, 9 and 10 were also convicted of the offence of rioting, armed with deadly weapons, and sentenced, under s. 148 of the Indian Penal Code, accused No. 1 to three months' rigorous imprisonment and the rest to eighteen months' rigorous imprisonment.

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* Criminal Appeal No. 101 of 1892.

(1) 7 A. 757.