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is rightly or wrongly done must, in my opinion, depend upon whether the mortgages upon a true interpretation can be so entirely disconnected. Here I think they could not. There is an onerous condition imposed upon the mortgagor by each of the later mortgages 3 and 4 to fulfil the obligations thus carried over from the 1st into the 3rd and from the 1st, 2nd and 3rd into the 4th, and it appears to me that when an Act intended for the relief of agriculturist debtors has to be applied to such a series of transactions, we ought to look rather to the total effect of the intention of the parties to them than rely upon the inartificial and probably incorrect form of the deeds themselves. That, as I understand it, is the sole ground upon which we are basing our decision here, and it is quite unnecessary to add anything more to the much fuller reasoning contained in the judgment of my Lord the Chief Justice.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1917. *January* 15.

DHURABHAI BHULDAS PATIL (ORIGINAL DEFENDANT), APPELLANT *v.* MOHANLAL MAGANLAL SHAH (ORIGINAL PLAINTIEF), RESPONDENT.*

Indian Registration Act (*XVI of 1908*), *section 17, sub-section 1* (d)—*Lease of land* dar salne mate—*Lease exceeding one year—Registration compulsory.*

It was provided by a lease as follows :—

"We have taken these three fields for cultivation from you yearly (*dar salné mate*) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation .....If we say anything false or unfair, or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we will restore possession of the fields to you as soon as you ask us to do so."

* Appeal from Order No. 32 of 1916.

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Held, on a construction of the lease, that the words *dar salne mate* (year to year) taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year; and, that, therefore, it was compulsorily registrable under the provisions of section 17, sub-section 1 (*d*) of the Indian Registration Act (XVI of 1908).

APPEAL from an order passed by R. S. Broomfield, Joint Judge at Ahmedabad, reversing the decree passed by, and remanding the suit to, M. I. Kadri, Additional Joint Subordinate Judge at Ahmedabad.

Suit to recover possession of certain fields.

The fields in dispute were leased by the plaintiff's father to defendant's father in 1909. The material portion of the lease, which was not registered, was as follows:—

"We have taken these three fields for cultivation from you yearly (*dar salne mate*) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation. In consideration of this we are to have the produce of Nos. 167 and 199. As regards No. 173 we will give you half of whatever the produce may be. We have taken the land for cultivation under the above conditions. If we say anything false or unfair, or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we will restore possession of the fields to you as soon as you ask us to do so. We shall raise no objection to doing so. You may let the fields for cultivation to any one you please."

In 1913, the plaintiff sued to recover possession of the fields from the defendant. The defendant denied the lease and contended that the fields were of his absolute ownership and possession.

At the trial, a preliminary issue was raised, whether the lease was admissible though not registered. The First Court found that it was compulsory registrable and therefore not admissible. It dismissed the suit.

On appeal, the Joint Judge held following 8 Bom. 493, 14 Bom. 319, 8 All. 405 that the lease created a

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tenancy-at-will and was therefore not compulsorily registrable. The learned Judge, therefore, reversed the decree and remanded the suit for trial on merits.

Against this order of remand, the defendant appealed to the High Court.

T. R. Desai, for the appellant :—The true construction of the lease is that it creates a tenancy from year to year: it was not to end at the option of the landlord but was to continue so long as the tenant chose: see *Ramkumar Mandal* v. *Brajahari Mridha*[1]. The case of *Mania* v. *Lallubhai*[2], relied on by the lower Court, was heard *ex parte* and was not at all argued on the other side. The cases of *Jivraj Gopal* v. *Atmaram Dayaram*[3] and *Khuda Bakhsh* v. *Sheo Din*[4] are distinguishable. The lease in question requires registration.

G. N. Thakor, for the respondent :—The lease in dispute is a lease for one year certain and beyond that period it leaves to the option of the parties to continue the tenancy, thus creating a tenancy-at-will.

The case of *Mania* v. *Lallubhai*[2] is approved of and followed in subsequent cases: *Jivraj Gopal* v. *Atmaram Dayaram*[3]; *Ratnasabhapathi* v. *Venkatachalam*[5]. See also *Virammal* v. *Kasturi Rungayyangar*[6]; *Khayali* v. *Husain Bakhsh*[7]; *Khuda Bakhsh* v. *Sheo Din*[4] and *Rama Hegde* v. *Padma Gauda*[8].

If then the lease creates a tenancy for one year certain with option thereafter to continue it does not

(1) (1868) 2 Ben. L. R. (A. J. C.) 75.
(2) (1900) 2 Bom. L. R. 488.
(3) (1889) 14 Bom. 319.
(4) (1886) 8 All. 405.
(5) (1891) 14 Mad. 271.
(6) (1881) 4 Mad. 381.
(7) (1886) 8 All. 198.
(8) (1886) P. J. 220.

require registration: see *Apu Budgavda* v. *Narhari Annajee*[1]; *Boyd* v. *Kreig*[2]; *Hand* v. *Hall*[3]. The case of *Jagjivandas Javherdas* v. *Narayan*[4] is distinguishable.

Desai, was not heard in reply.

BATCHELOR, J.:—The question before us is as to the construction of a lease with reference to the provisions of the Registration Act, section 17, sub-section 1 (*d*); in other words the point to be decided is whether this particular lease is compulsorily registrable as being a lease of immoveable property from year to year or for any term exceeding one year.

The trial Court held that the lease was compulsorily registrable under this section, but the learned Joint Judge has taken the other view.

The rent note which witnesses the lease of the property is in the following words:—

"We have taken these three fields for cultivation from you yearly (*dar salne mate*) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation. In consideration of this we are to have the produce of Nos. 167 and 199. As regards No. 173 we will give you half of whatever the produce may be. We have taken the land for cultivation under the above conditions. If we say anything false or unfair, or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we will restore possession of the fields to you as soon as you ask us to do so. We shall raise no objection to doing so. You may let the fields for cultivation to any one you please."

Now the first words which in this document seem to me significant are the words '*dar salne mate*' which mean annually or year by year. These words taken in connection with the total absence of any date for the expiry of the tenancy seem to me to suggest that the

(1) (1878) 3 Bom. 21.
(2) (1890) 17 Cal. 548.
(3) (1877) 2 Exch. D. 355.
(4) (1884) 8 Bom. 493.

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parties contemplated that this lease should operate for a period exceeding one year. It should be remembered that this is a rough inartificial document executed in the mofussil and not an instrument drawn by expert lawyers.

The learned Joint Judge, referring to the decision in *Mania* v. *Lallubhai*[1] and other cases, says that in his opinion the test as to whether a document of this kind is or is not compulsorily registrable is whether the option of terminating the tenancy is with the tenant or the landlord. As a general statement this seems to me sufficiently expressive of the principle, but the learned Joint Judge has, I think, misapplied it in the present instance in reliance upon this Court's decision in *Jagjivandas Javherdas* v. *Narayan*[2]. The rent note in that case does, no doubt, bear some resemblance to the rent note in this case. But the decision in *Jagjivandas' case*[2] is only good for the principle which it expounds. That principle is that the test to apply is to consider "whether the document does or does not create an interest by way of lease extending beyond one year." In that case the learned Judges were of opinion that no such interest was created by the document then before them. It may be observed that the appeal was decided without argument on behalf of the respondent. But, waiving that reflection, it is clear that the words of the *kabulayat* then before the Court were by no means identical with the words which we have now to construe. In the rent note then before the Court the tenant stated "I will continue to pay you rice annually as stated above so long as you will keep the land in my possession." That phrase, so far as the report shows, stood isolated and alone, and in its position the learned Judges construed it as a stipulation giving the landlord complete power to

(1) (1900) 2 Bom. L. R. 488. (2) (1884) 8 Bom. 493.

resume possession whenever he chose. Mr. Thakor has contended that the same effect must be given to the words "so long as you give us the fields for cultivation" occurring in the *kabulayat* now before us. But in my opinion these words are not susceptible of this interpretation. For, first, it is clear from the context that the object of the words is, not to describe the term or duration of the lease, which indeed is reserved for later mention, but to impose on the tenant an obligation to pay the Government assessment for a certain period. That period in this village-made document is described as 'so long as you give us the fields for cultivation.' But this phrase, as I read it, is only a usual and polite way of saying 'so long as I am in fact your tenant.' An Indian tenant addressing an Indian landlord would, I think, naturally use this permissive form of words without any further meaning than I have stated. The phrase cannot, in my view, be strained so as to be read as constituting a stipulation that the landlord shall be empowered to re-enter whenever he elects to do so. This view seems to me supported by the later language of the *kabulayat*. For the final clause provides, as I have set out, that the landlord shall have power to re-enter on the occurrence of a particular named event, that is to say, the practice of a specified fraud by the tenant. But if the earlier phrase gave the landlord complete authority to resume possession at any moment dictated by his own mere will or caprice, it would have been obviously unnecessary to insert these later words empowering the landlord to determine the tenancy on the occurrence of particular misbehaviour on the part of the tenant.

On these grounds reading the terms of the rent note which we have to construe, and having regard to the roughness and inartificiality of the document, I am satisfied that the intention of the parties was to create,

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and that by this document they have created, an interest by way of lease extending beyond one year.

I think, therefore, that the appeal must be allowed, the lower appellate Court's order must be set aside and the appeal must be remanded to the lower Court for decision according to law.

The appellant will have his costs of this appeal, but other costs will be costs in the cause.

HEATON, J.:—I concur.

Appeal allowed.

R. R.

CRIMINAL APPELLATE.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1917. January 12.

EMPEROR *v.* KIKABHAI RANCHHODDAS AND CHHAGAN TRIBHOVAN.*

Bombay District Police Act (Bombay Act IV of 1890), section 61, clause (b)† *—Disregarding rule of the road—Driving a bicycle on a wrong side of the road—Vehicle—Bicycle.*

A bicycle is a vehicle within the meaning of the word as used in clause (*b*) of section 61 of the District Police Act (Bombay Act IV of 1890).

THESE were two appeals by the Government of Bombay against orders of acquittal passed by Ishvardas

* Criminal Appeals Nos. 490 and 491 of 1916.

† The material portion of the section runs as follows :—

61. In any local area to which Government by notification from time to time extends this section or any part thereof, whoever contrary thereto—

* * * * *

(*b*) drives a vehicle of any description along a street and does not keep (except in cases of actual necessity or of some sufficient reason for deviation) on the left side of such street when meeting any other vehicle, or on the right side of such street when passing any other vehicle ;

* * * *

shall be punished with fine which may extend to fifty rupees.