

(1890) 03 CAL CK 0005

Calcutta High Court

Case No: None

A.C. Boyd

APPELLANT

Vs

A. Kreig

RESPONDENT

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**Date of Decision:** March 5, 1890**Acts Referred:**

- Registration Act, 1877 - Section 17(d)

**Citation:** (1890) ILR (Cal) 548**Hon'ble Judges:** Trevelyan, J**Bench:** Single Bench

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**Judgement**

Trevelyan, J.

The only questions argued before me and which I have to decide in this case are whether the documents which create the tenancy of the defendant are admissible in evidence. It is conceded that if they are admitted in evidence there must be a decree for the defendant except as I shall mention hereafter, and that if they are not so admitted the plaintiff must succeed. The contention between the parties is as to the payment of the costs. The plaintiff is entitled to a decree for Its. 520, the rent for the months of July, August, September and October 1889.

2. The rent for July was offered to him, but he refused to accept it, so that the tender of the rent for the subsequent months would have been an empty form, and as the rent for these months accrued due after the suit was brought, the tender or non-tender of the rent could not affect the costs of the suit.

3. The defendant has vacated the premises since the suit was brought.

4. The admissibility of the documents depends in the first place upon whether they require registration, and in the second place upon whether the lease which was tendered for execution and was properly stamped can be treated as a part of the correspondence which created the tenancy.

5. As to the registration, a series of cases shows that where correspondence constitutes a contract leasing premises for more than a year, that correspondence must be registered, although a formal document may be contemplated. There is no doubt that by the correspondence in this case the plaintiff leased, and the defendant accepted the lease of, the premises.

6. The lease was for a year, but it was provided that the tenant should have the option of renewal for a second year.

7. I have to decide whether the existence of this option creates a lease for a term exceeding one year within the meaning of Section 17, Clause (d) of the Registration Act (III of 1877).

8. After careful consideration I have come to the conclusion that the documents do not require registration, A number of cases have been cited and have been referred to by me.

9. Of the cases which are in point the result is that on the one hand we have decisions of the Bombay, Madras, and Allahabad High Courts accepting as applicable to the determination of this question the decision of the Court of Appeal in *Hand v. Hall* L.R. 2 Ex. D. 355. On the other hand, there are some decisions of Division Benches of this Court on appeals from the mofussil, the last of which, *Bhobani Mahto v. Shibnath Para* ILR Cal 113 is in point. The value of the report of that case and of the other cases of this Court which have been cited is much diminished by the absence of notes of the argument or of the cases cited. In determining whether I ought to act upon this decision, it is all important to know whether the case of *Hand v. Hall* was cited to the learned Judges who tried the case in this Court. The report is silent, and both the Judges have since left this Court, so I have no means of referring to them as to that fact. I think it is pretty clear that *Hand v. Ball* was not cited. It is so much in point that if it had been, the learned Judges of this Court would probably have distinguished it in their judgment.

10. In *Hand v. Hall* the question was, it is true, as to the construction of English statutes, but the question there was, as the question is here, whether a lease giving an option to renew was a lease for more than the original term of the demise.

11. The reasoning in *Hand v. Hall* seems to apply equally here.

12. Lord CAIRNS there says: "The document we have to construe in this case runs thus: "Hand agrees to let, and Hall agrees to take, the large room on the south end of the Exchange, Wolverhampton, from the 14th February next until the following mid-summer twelve months." Stopping there, there can be no doubt that those words are words of present demise, and if the document had contained those words only, the defendant would have become tenant from the 14th of February to the following mid-summer twelvemonths. The document, however, goes on: "With right at the end of that term for the tenant, by a previous month's notice, to remain on

for three years and a half more." By this latter part of the agreement an option is given to the defendant, and must be exercised by him before it can be said that any interest has passed to him. It is a stipulation that at his option, on a notice given to the plaintiff, he shall not be disturbed for three years and a half. Whereas there is not anything to be done by the tenant in the first part of the agreement to create a demise, in the second part something has to be done by him before that part takes effect, and until that is done it is impossible to tell whether a tenancy shall come into force or not. I think, therefore, that it is absolutely necessary to divide the contract into two parts. I think the agreement is an actual demise, with a stipulation super added that if at his option the tenant gives the landlord a notice of his intention to remain, he shall have a renewal of his tenancy for three years and a half."

13. On the same reasoning there is in this case merely a demise for a year.

14. I am justified in my view that the reasoning in *Hand v. Hall* applies to the construction of the Registration Act by the decision of the Bombay High Court in *Apu Budgacda v. Narhan Annajee* ILR 3 Bom 21 by the decision of the Allahabad High Court in *Khayali v. Husain Bakhsh* ILR All. 198, and by the decision of the Madras High Court in *Virammal v. Kasturi Rangayyavgar* ILR Mad 381 Speaking with every respect for the decision of this Court to which I have referred, I think I should apply the reasoning of *Hand v. Hall* to the construction of the Registration Act. I have no doubt that if *Hand v. Hall* and the decisions to which I have referred had been cited to the Judges of this Court, they would have come to a different conclusion.

15. I hold that the documents in question do not require registration.

16. There can, I think, be no doubt that the correspondence required stamping. It was complete in itself before the lease was tendered for execution. It is only on the ground that it was so complete that the defendant can succeed. If I were to accede to Mr. Gasper's argument, I should have to hold that the revenue law could be evaded by stamping a subsequent letter after the contract had been completed.

17. If the penalty (Rs. 110) is paid, the documents tendered can be marked as exhibits. The penalty was here paid.]

18. The penalty having been paid, the documents may be admitted in evidence, and there will be a decree for the plaintiff for Rs. 520. In other respects the suit is dismissed.

19. The plaintiff must pay the defendant's costs on scale No. 2.