1876

GHAZI v. KADIR BAKSH.

Notwithstanding this error in the application, the execution proceedings were made in effect, though not nominally, with reference to the latter decree, and the irregularity, such as it was, pervaded the entire proceedings in execution, including the publication of the sale, and it was made the ground of an objection to the confirmation of the sale under s. 256, Act VIII of 1859, and the objection was disallowed. This being so, I am of opinion that this suit cannot be maintained with reference to s. 257, Act VIII of 1859.

BEFORE A FULL BENCH.

1876
April 27.

(Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield).

TAJUDDIN KHAN (DEFENDANT) *v.* RAM PARSHAD BHAGAT (PLAINTIFF).*

Act XVIII of 1873, *s.* 93, *cl.* (*a*)—*Bhaoli—Money-equivalent—Rent—Revenue Court—Civil Court—Jurisdiction.*

Held (PEARSON, J., dissenting), that a suit for the money-equivalent of arrears of rent payable in kind is a suit for arrears of rent within the meaning of s. 93, Act XVIII of 1873, and therefore cognizable by a Revenue Court.

Per PEARSON, J.—Such a suit, being a suit for damages for a breach of contract, is cognizable by a Civil Court.

THIS was a suit to recover Rs. 29-1-2, being the market-value of the plaintiff's share in the produce, for the years 1278, 1279, and 1280 fasli, of two bíghas, two biswas, and 17 dhurs of land situated in patti Ram Dihal Rao. The defendant denied that he was a tenant, alleging that he was a co-sharer with the plaintiff in the patti and that the land was his sír-land.

The Revenue Court of first instance found that the defendant held the land as a tenant, and gave the plaintiff a decree. The first Court of appeal held that the suit was barred by s. 106, Act XVIII of 1873, and that the land was the defendant's sír-land, and dismissed the suit. The second Court of appeal agreed with the Court of first instance and also gave the plaintiff a decree.

On appeal to the High Court by the defendant, the Court (Pearson and Turner, JJ.), with reference to the second ground

* Special Appeal, No. 1018 of 1875, from a decree of the Judge of Gházipur, dated the 23rd June, 1875, reversing a decree of the Collector, dated the 23rd January, 1875.

1876

TAJUDDIN KHAN v. RAM PARSHAD BHAGAT.

taken in the memorandum of appeal, *viz.*, that a suit for the value of grain was not cognizable by the Revenue Court, referred to a Full Bench the following question :—

"Whether, when rent is payable in grain, it is competent for the landlord to sue in a Revenue Court for the equivalent in cash?"

Munshi *Hanuman Parshad* (with him the *Senior Government Pleader*, Lala *Juala Parshad*), for the appellant.—There is express provision made in s. 43, Act XVIII of 1873, for the recovery of rent payable in kind. The other provisions in the Act relating to rent are applicable only to rent payable in cash. The provisions of s. 50, for instance, as to the deposit of rent in Court, are not applicable, nor are the provisions as to distress. The suit is a suit for damages, the value of the produce to which the plaintiff was entitled being the measure of the damages, and is cognizable by a Civil Court.

Pandit *Bishambar Nath*, for the respondent.—It was never suggested that the suit was not cognizable by the Revenue Court until it came up in special appeal. Whether the rent is paid in cash or in kind, the provisions of Act XVIII of 1873 are applicable generally. The provisions of s. 56 and of s. 24 are applicable in either case. He referred to *Lachman Parshad* v. *Holas Mahtoon* (1).

STUART, C. J.—The referring order in this case is as follows :—"Whether, when rent is payable in grain, it is competent to the landlord to sue in a Revenue Court for the equivalent in cash," and the second plea in appeal to which our attention is directed is in these terms :—"The decision is bad in law ; the present action for the value of grain was not cognizable by the Revenue Court." The reference therefore goes further than the bare question whether the money-equivalent of a grain-rent can be sued for in the Revenue Court. The reference also assumes that the rent agreed to be paid by the defendant was a grain-rent, or a rent payable in kind. But the suit is for arrears of rent, Rs. 29-1-2, being the price or money-value of the grain from 1278 to 1280 fasli, and this suit is brought in the Revenue Court.

(1) 2 B. L. R., App., 27 ; S.C., 11 W. R., 151.

If the question had simply been, as put in one portion of the referring order, whether when rent is payable in grain it is competent to the landlord to sue in a Revenue Court for the equivalent in cash, I would have no hesitation in answering it in the negative. But the second plea in appeal to which the referring order directs our attention raises the question in a simple form. By s. 3 rent is defined to mean "whatever is to be paid, delivered, or rendered by a tenant on account of his holding, use, or occupation of land;" by which I understand to be meant that the contract or agreement for rent may be either that it be paid in money or delivered in kind or by services to be rendered. It does not mean that the rent may be satisfied in any one of these three ways, or that the tenant is to be at liberty to substitute one mode of compliance with his agreement for another; in other words, the definition does not mean that where the rent is a grain one it can be either claimed or recovered in money. The other provisions of the Rent Act to be considered are s. 93, which provides that no Courts other than Courts of Revenue shall take cognizance of the disputes in matters therein mentioned, and the very first there mentioned are "suits for arrears of rent on account of land." We thus see in the first place that a grain-rent is a good rent according to the Rent Act, and is recoverable as such, and in the next place that a suit for "arrears of rent" is exclusively cognizable by the Revenue Court. There is, however, no explanation given in the Act as to what these arrears may be, or whether, in regard to any particular form or kind of rent, the arrears meant by this section are arrears of the same kind or form of rent; in other words, whether, in the case of a grain-rent, the arrears here intended are arrears in grain or according to their value in money. There could of course be no difficulty where the stipulated rent is a money one, and a suit for a year's rent in grain brought immediately upon the rent becoming due could be easily worked out to decree, which would be for the delivery of the stipulated quantity of grain. But the claim made in the present case is not only for arrears of rent, but for arrears to be made good not in grain, but in money. Such a claim in the form of damages could of course be made in the Civil Court. But is such a claim for rent to be sued for in the Revenue Courts? In other words, is the suit in the present case a proper application of s. 93 of the Rent

1876.

TAJUDDIN KHAN v. RAM FARSHAD BHAGAT.

Act? It would almost appear to be not. But on the other hand there are difficulties. It is not easy to understand how arrears of grain-rent can be recoverable at all, or can be even made intelligible excepting in regard to their money-equivalent. I observe that the Assistant Collector refers in his judgment to certain decrees which had been obtained by the plaintiff against his tenants for arrears of rent, and it would have been desirable to have seen these decrees. If the rent in those cases was also a grain one, what did those decrees, being decrees for *arrears*, give the plaintiff? Did they decree the arrears in grain, leaving the rest to the execution department, or did they directly decree in money? It would have been interesting to have known this. But we must dispose of this reference as best we can on the papers before us. Supposing a decree for arrears of rent payable in grain, how can such a decree be executed by the Revenue Court? Strictly it ought to be a decree for specific performance. But how can there be specific performance with respect to arrears of a grain-rent extending over several years? and what kind of grain is to be delivered at the end of the period, not surely and specifically the particular grain which alone can be had at the end of the period? Thus, in the present case, the claim is for arrears for 1278 to 1280 fasli. Would the delivery for the whole period of the grain of 1280 be valid performance on the part of the defendant? Unless there be some facilities, of which I am not aware, in the execution-department for conversion into money, serious difficulties present themselves to my mind against such procedure. Mr. Justice Pearson, with reference to the summary procedure provided by s. 43 of the Act without having recourse to a regular suit, very pertinently remarks that such a suit "would be of little use if the tenant had already appropriated and dissipated the whole crop." No doubt, unless you allow the landlord to sue for the money-equivalent for the produce, a suggestion which appears to me to be pregnant with some relevancy to this reference. This s. 43, it will be observed, does not enact that if a landholder does not avail himself of it he shall have no other remedy; nor does it follow that because this section has not been acted upon, therefore the landlord may not fall back upon s. 93 and sue in the Revenue Court for his arrears. On the whole, the conclusion would seem to be that, as suits for arrears of rent are exclusively cogniz-

1876

TAJUDDIN KHAN v. RAM PARSHAD BHAGAT.

able by the Revenue Court, they can only be so where grain is the rent, either by the claim for a money-equivalent being allowable in them, or by the decree in them being made capable of being satisfied in money; otherwise it seems to me that a suit for arrears of a grain-rent can in no case be instituted in a Revenue Court and that s. 93, therefore, has no application to such a suit. But this would be a conclusion rather too violent. I have little doubt that the intention of the legislature was to give every reasonable facility for recovery of such arrears as are mentioned in s. 93, and I think we may help that intention by holding that conversion into, or recovery in, money, is such a reasonable facility, and that such recovery may either be made by a claim to that effect in the plaint, or by allowing the decree to be executed to the same effect.

It is not without doubt and hesitation that I have formed this opinion, but it suggests a view of the question before us which appears to me to be the only one that can possibly be entertained, unless we hold that, in no case, can arrears of rent in grain be recovered in a Revenue Court, s. 93 notwithstanding.

The argument maintained in the judgment of my Hon'ble and learned colleague Mr. Justice Turner is unfavourable to the jurisdiction of the Revenue Court, but he says that suits of this nature have for a very long period been regarded as suits for rent, and tried in the Revenue Courts, and he points out that in Mr. Thomason's Directions to Revenue Officers such suits are mentioned as cognizable by the Revenue Courts. These may be very proper considerations, although I must remark that Mr. Thomason's work, however useful, is not a legal authority, and I could not allow it to influence my mind on the law of any case. What I go upon is not so much the habits or customs of the authorities in such matters, or the sentiments or ideas contained in Revenue Books, as our duty to recognise the legal necessities of the Rent Act, and to make the law and procedure provided by it reasonably practicable and available for the purposes for which the Act was enacted. My answer, therefore, to this reference is in the affirmative.

PEARSON, J.—The question referred to us for determination must, in my opinion, be answered in the negative. If a tenant agreed to make over to his landlord a certain portion or proportion

1876

TAJUDDIN KHAN. v. RAMPARSHAD BHAGAT.

of the produce of the holding, *or* the money-value thereof according to market-rates, as rent, a suit for the recovery of the rent in either form might doubtless be brought. But the question referred to us imports or implies that the rent is payable in grain only; and this being so it is impossible to hold that the money-value of the grain is the rent which the landlord is entitled to demand. What is really sought in this suit is not the stipulated rent, but an equivalent for it; or in other words, damages for the tenant's breach of contract by having failed to pay it. A suit for damages on account of such a breach of contract would be not in the Revenue, but in the Civil Court, and the period of limitation applicable to such a suit would not be the same as that which applies to a suit for arrears of rent under s. 94, Act XVIII of 1873. S. 43 of that Act provides a mode whereby, whenever rent is taken by division of the produce in kind, a landholder may summarily obtain his share of it, without having recourse to a regular suit, which would be of little use if the tenant had already appropriated and dissipated the whole of the crop.

TURNER, J.—The 93rd section of the Rent Act declares that, except in the way of appeal as thereinafter provided, "no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in that section might be brought, and such suits shall be heard and determined in the said Courts of Revenue * * * and not otherwise."

The terms of this section admit of a very wide construction. Reading the paragraphs separately, not only is it declared that such suits as are mentioned in the section are to be tried only in the Revenue Courts, but there is also a direction that no Courts other than Revenue Courts are to take cognizance of any dispute or matter in which any suit of the nature mentioned in the section might be brought.

If this direction be construed strictly, there are classes of cases constantly entertained by the Civil Courts erroneously. There are disputes and matters in which suits of the nature mentioned in s. 93 might be brought in the Revenue Courts, but of which the Civil Courts take cognizance for the purpose of granting other relief than could be granted by the Revenue Courts. If those

Courts ought not to entertain them, the provisions of the Rent Act worked a far more extensive change than has been generally understood. Possibly the proper construction of the first paragraph of the section, reading it with the second, would be this, that it prohibits the Civil Courts from entertaining claims when relief substantially similar to that sought might be obtained by a suit in the Revenue Court of the nature mentioned in s. 93. Otherwise I can conceive instances in which suitors would be debarred from obtaining relief which, before the passing of the Act, they might have obtained in the Civil Court, and which the Revenue Court is not competent to grant.

I cannot then rest the conclusion at which I have arrived altogether on the ground that, if this suit be not a suit for rent, the dispute or matter is one in which a suit for rent might be brought, and that the jurisdiction of the Civil Courts is excluded.

That the suit is not strictly what would be termed a suit for rent is, I think, clear. Rent is defined in the Rent Act (and the definition expresses the ordinary sense of the term) as meaning "whatever is to be paid, delivered, or rendered by a tenant on account of his holding, use, or occupation of land." It was admitted in the course of the argument that the suit was brought on an alleged contract or understanding to deliver a certain share of the crop as the rent of the holding, and that there was no contract or understanding to pay money in the event of a failure to deliver the share of the crop. If the contract or understanding had been in the alternative, for the delivery of the crop or its market-value at the date on which delivery should have been made of the share of the crop, then a suit for the share of the crop or a suit for its money-value would have been a suit for rent: it would have been a suit for that which was to be paid, delivered, or rendered by the tenant, but inasmuch as in the case referred there was no such alternative contract, the only suit for rent in its strict sense which the landlord could have brought would have been a suit for the share of the crop, and in claiming the money-value of the crop he is claiming not rent but damages or compensation for the non-payment of rent. I would here notice that the decision of the Sudder Court in *Phulloo Kooaree* v. *Immam Bandee* (1) has been over-ruled by innumerable

(1) S. D. A. Rep., N.-W. P., 1864, vol. ii, 671.

1876

TAJUDDIN KHAN v. RAMPARSHAD BHAGAT.

decisions of this Court, and that suits of the nature of that suit are now brought in the Civil Court and tried as suits for damages.

In a strict sense, then, I cannot allow that the suit out of which this reference arises is a suit for rent, but suits of this nature have, I believe, for a very long period been regarded as suits for rent and tried in the Revenue Courts. In Mr. Thomason's Directions for Collectors of Land Revenue, s. 265, they are expressly mentioned as suits cognizable by the Revenue Courts. When Act X of 1859 was in force and subsequently to the passing of Act XVIII of 1873, I believe I am right in asserting that such suits have been instituted in the Revenue Courts as rent suits, and heard on appeal by this Court, and that hitherto no objection has been taken to the competency of the Revenue Courts to entertain them. On the other hand, I do not remember any case in which such a suit has been instituted in the Civil Court. Under these circumstances I think the rule *cursus curiæ lex curiæ* should be applied, and that we should hold that such suits, although they may not be strictly suits for rent are to be regarded as embraced in that term in s. 93 of the Rent Act, and that the large terms in which the first paragraph of s. 93 is couched may fairly be read as prohibiting the Civil Courts from entertaining a suit of the nature mentioned in the reference.

SPANKIE, J.—The claim here was for the balance of the corn-rent of the sír-land in suit, amounting to Rs. 29-1-2, being the market-price of the grain to which plaintiff was entitled as his share of the produce from 1278 fasli to 1280 fasli.

The defendant entirely repudiated any relation of landlord and tenant between the plaintiff and himself, and urged that the land on account of which rent was claimed had been in his possession as his sír, he being a sharer in the mahál.

The Assistant Collector found that the farmers (they are thus described by the Assistant Collector) of the plaintiff's share, and other sharers had always received corn-rent out of the produce of the land in suit, and other lands paying rent in kind, and held by the defendant, in proportion to their shares. In 1278 fasli, plaintiff's land was released from possession of the farmers and defendant was found to be in arrears. He also found by

1876

TAHUDDIN KHAN v. RAM PARSHAD BHAGAT.

reference to the Revenue Court's decisions that the plaintiff in this suit and other sharers had brought suits against their tenants for arrears of rent of their shares and had obtained decrees. The defendant was a sharer in the mahál, but he was a cultivator only of the lands on account of which rent was claimed. He made no objection to the amount of the price of grain. But the Assistant Collector made an inquiry and found that it had been entered correctly in the balance-sheet furnished by the patwári according to the market-rate. He therefore made a decree for the sum claimed.

There was an appeal to the Collector. It was urged that, as the Assistant Collector had admitted that defendant was a sharer in the mahál, he could not decree against him for rent, and that defendant held the land as his sír and not as a cultivator. The Collector held that the evidence in support of the plea that plaintiff's lessees used to get a portion of the produce of these three bighas was unworthy of credit. The plaintiff allows that he never received a share of the rent, and therefore there was no custom of previously receiving a share of the rent proved. He also found the land to be defendant's sír.

The Judge in appeal held that there was proof that the rent had been received by plaintiff, who distinctly deposed that he had received it, and during the lease that the lessees had received it. There was no proof that defendant had ever held these lands in any other character than as a cultivator. The land was not his sír.

Amongst other pleas in special appeal it was contended that an action for the value of grain was not cognizable by the Revenue Court. The Division Bench before whom the appeal was heard has referred the following question to the Court at large—whether, when rent is payable in grain, it is competent to the landlord to sue in a Revenue Court for the equivalent in cash.

It has been necessary to set out the facts in order that we may thoroughly understand the question before us. In my opinion the suit cannot be regarded as merely an action for the value of grain, or as one for damages on account of rent wrongfully withheld. It is substantially a claim for rent to which the plaintiff considers himself entitled, and which the defendant refuses to pay, as he sets

1876

TAJUDDIN KHAN v. RAMPARSHAD BHAGAT.

up his own proprietary title. The rent is payable in kind after a division of the produce. Now rent under Act XVIII of 1873 is defined to be whatever is paid, delivered, or rendered by a tenant on account of his holding, use, or occupation of land. Where rent is due and withheld, the remedy provided by Act X of 1859, which had not been repealed when the cause of action arose in this case, was distraint (1) or a summary action. But distraint could have been had for a balance of one year and no more (2). The present suit is for a balance of three years. Under the new law, as under the old, the produce of all land in the occupation of a cultivator shall be deemed hypothecated for the rent payable in respect of such land (3), and under s. 43 of the Act provision has been made in cases where the rent is taken in kind by division of the produce, or by estimate or appraisement of the standing crop, or other procedure of a like nature requring the presence both of the cultivator and landholder. If either the landholder or the tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop, an application may be made by either party to the Collector requesting that a proper officer may be deputed to make the division, estimate or appraisement. After following the procedure set forth in the section, written authority shall be given to the party applying for it to divide the crop or cut the crop. But this section would not apply to a case like the one before us, in which rent is claimed for a period of three years. Moreover s. 43, in my opinion, contemplates a case in which there is no denial of the relationship of landlord and tenant between the parties, and in which it is not disputed that the rent is ordinarily taken in kind by division, or by estimate or appraisement. It would not apply to a case in which the tenancy was denied and proprietary right was asserted by the person occupying the land. The procedure to be followed under s. 43 is a summary one for the purpose of enforcing division when the crop, already hypothecated to the landlord, is ripe, and the latter is at liberty to take his share of the produce as his rent, the rent being due when the crop is ready to be cut or is cut. But I do not understand that the remedy provided by s. 43 would

(1) Act X of 1859, s. 112.
(2) Act X of 1859, s. 113.
(3) Act XVIII of 1873, s. 56.

1876

TAJUDDIN KHAN v. RAMPARSHAD BHAGAT.

deprive the landlord of his right of action under s. 93 for arrears of rent.

Prior to the passing of Act X of 1859 the landlord was at liberty to distrain the crop of his tenant for rent due for one year; but, if he did not do so, he was at liberty to bring a summary suit for the arrear. So, as noticed above, Act X provided similar remedies, which have been continued under Act XVIII of 1873, and indeed enlarged as regards cases in which the rent is payable by division of the produce. But there is nothing in s. 43 which bars recourse to any other remedy provided by the Act. Nor does s. 93 bar any *suit for arrears of rent that is not paid* in cash. Bearing in mind that rent is whatever is to be paid, delivered, or rendered by a tenant, it would seem to me that the suit would be for cash-rent, for rent payable in kind, or, if the produce itself is not to be had, that a suit would lie for its equivalent in money. It is clear that when a crop is ripe it must be cut, or it would wither and be lost, and if cut, a share of it could not be recovered in a summary suit under the Act, for the grain would have disappeared, or if not cut, it would be worthless as some time must elapse before a suit could be brought or a decree obtained. Again, the dispute may be one, as this is, in which the right to recover any rent is denied, and if there could be no suit under s. 93, then the landlord would be deprived of all remedy under the Act, or he must have recourse to an action in the Civil Courts, and if so, what becomes of the provision of s. 93 that, except in the way of appeal no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in the section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in the Act and not otherwise? Amongst these suits are suits for arrears of rent on account of land or on account of any rights of pasturage, forest rights, fisheries, and the like. In such suits the plaint is to state the subject-matter of the claim. Now, merely looking at the plaint in this case, the subject-matter of the claim is that the landlord wants his rent and nothing else. It has not been paid for three years, so he cannot get the share of the produce in actual grain, therefore he asks for the equivalent, *i.e.*, the market value of the crop proportionate to the share to which he was entitled.

1876

TAJUDDIN KHAN v. RAMPARSHAD BHAGAT.

It is not urged by the defendant that the suit was bad because a claim could not be heard in the Revenue Court for an equivalent in cash of the share of the grain to which the plaintiff was entitled as rent. It was not so urged in appeal until the case came to this Court. Prior to the passing of Act X of 1859 it was the custom of our Revenue Courts to hear such suits as this. After quoting the law applicable to distraint, Mr. Thomason says—"By summary suit the landlord may establish his right to a certain quantity of grain, *or its money-equivalent* at the market-price of the day" (1). This section, it is true, has been superseded, but it indicates the practice of the Courts prior to the passing of Act X of 1859, which superseded the law on which the remarks in s. 265 and other sections on the same subject are based; and, as pointed out above, Act X of 1859 re-enacted the same remedies, and Act XVIII of 1873 has enacted and even enlarged those of Act X of 1859. I cannot doubt that the same practice of suing in some cases, such as this, for the equivalent in money was followed as long as Act X was in force. I would here refer to the case marginally cited, in which the Sudder Dewanny Adawlat held that, where a zemindar sued a ryot to recover the value of half the produce of two fruit-trees standing on the cultivated land held by the latter, the suit was one for arrears of rent due on account of a manorial right contiguous to a forest right and cognizable under cl. 4, s. 23, Act X of 1859. It will be observed that the Collector in the case now before us calls attention to the fact that rent had been taken from the defendant and other tenants in the village in which the parties reside, and I apprehend from his remarks that these rents were payable in the same way as the rent in this suit is said to be payable—that is in kind.

Phulloo Kooaree v. *Immam Bandee Begum* (2.)

I may add that in the Lower Provinces suits of this nature are heard and determined under the Bengal Revenue Act. I find in the case cited in the margin that it was held, in a suit to recover money due on payment in kind for the use of plaintiff's land by stacking timber thereon, that the claim was of the nature of one for rent. In this

Jumna Doss v. *Gawsee Meah* (3).

(1) Directions for Collectors of Land Revenue, s. 265.

(2) S. D. A. Rep., N.-W. P., 1864, vol. ii, 671.

(3) 21 W. R., 124.

case the suit "was in substance a suit brought to recover money due, or the value of a certain proportion of goods which ought to be paid in kind." I cannot say whether this particular suit was brought under the Bengal Revenue Act (VIII of 1869); possibly it was not so brought, but whether it was so or not, it is a case which shows that a suit may be entertained for money due or the value of a certain proportion of goods which ought to be paid in kind. The case now to be cited was one for arrears of rent and brought under the special Revenue Act. The rent was said to have been payable in kind, and the plaintiff's suit was for the value of his share. So again, in another case, the suit was for arrears of rent, and with respect to a portion of the claim the Court remarked,—"In respect to what are called cesses, we think they are not so much in the nature of cesses as of rent in kind (2)." In this case money was sued for. I notice these cases to show that suits, such as this is, appear to have been admitted without question, and such a plea as that raised in special appeal which has led to the present reference was never, as far as I can discover, brought before the Calcutta High Court (3).

Bibee Jân v. *Bhajul Singh* (1).

Looking therefore at past practice, at what appears now to be the practice of the Courts, having due regard to the definition of rent in Act XVIII of 1873, to the fact that the jurisdiction of all Courts but the Revenue Courts is barred in these Provinces in suits which are of the nature of those mentioned in s. 93, and considering that the suit before us is one substantially and entirely for rent, I would say, in answer to the reference, that the landlord is competent to sue in the Revenue Court for the equivalent in cash where rent is payable in grain.

OLDFIELD, J.—I concur in the view taken by Mr. Justice Spankie on the question referred and in his proposed answer to the reference.

(1) 21 W. R., 438.

(2) *Budhna Orawan Mahtoon* v. *Jugessur Doyal Sing*, 24 W. R., 4.

(3) See *Mullick Amanut Ali* v. *Ukloo Pasee*, 25 W. R., 140, where a similar plea was raised, with a reference to Act VIII (Bengal) of 1869, the Calcutta High Court ruling that a suit for the value of rent payable in kind was cognizable under that Act.