Rs. 541-15-$5\frac{20}{22}$ his liability under the mortgage for Rs.600; and after discharging from this balance Rs. 1,445-3-$11\frac{50}{66}$, his liability under the mortgage for Rs. 1,600, a surplus of Rs. 612-12-$6\frac{22}{66}$; he has a right to claim contribution from mauza Atwa to the extent of one moiety of this amount, *viz*, Rs. 306-6-$3\frac{1}{6}$. Although then we must reverse the decree of the Court below setting aside the sale, the respondent is entitled to a declaration that Rs. 306-6-$3\frac{1}{6}$ are due as a contribution from mauza Atwa, and to interest on that sum from the date of sale at the rate of 12 per cent. per annum; and in order to avoid future litigation we consider it not improper to order in this suit that, in the event of that sum with interest to the date of payment not being paid within three months from the date of the decree, the respondent shall be at liberty to recover it by the sale of the $2\frac{1}{2}$ biswa share in Atwa or so much thereof as may be necessary to satisfy the debt. We order that the respondent bear his own costs and pay two-thirds of the costs of the appellant in all Courts, the costs so awarded are to be set off against so much of the amount declared due to the respondent under the decree.

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

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GOSHAIN GIRDHARIJI (DEFENDANT) *v.* DURGA DEVI (PLAINTIFF).*

Arbitration—Act XVIII of 1873 (N.-W. P. Rent Act)—Act XIX of 1873 (N.-W. P. Land Revenue Act).

Under the general law parties to suits may, if they are so minded, before issue joined, refer the matters in dispute between them to arbitration, and after issue joined, with the leave of the Court.

Act XVIII of 1873 does not prohibit the parties to the suits mentioned therein from referring the matters in dispute between them in such suits to arbitration.

Where therefore the parties to a suit under that Act agreed to refer the matters in dispute between them to arbitration, after issues had been framed and evidence recorded, and applied to the Court to sanction such reference, *held* (STUART, C. J., dissenting) that the Court was competent to grant such sanction, and on receiving the award to act on it.

THIS was an appeal to the High Court heard by a Division Bench composed of Stuart, C. J., and Spankie, J., which was referred

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* Second Appeal, No. 595 of 1878, from a decree of H. G. Keene, Esq., Judge of Agra, dated the 8th March, 1878, affirming a decree of Pandit Debi Prasad, Assistant Collector of Muttra, dated the 23rd November, 1877.

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by Stuart, C. J., to the other Judges of the Court, under s. 575 of Act X of 1877, the Judges composing the Division Bench differing on a point of law. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the Judges composing the Division Bench and in the judgment of the other Judges to whom the appeal was referred.

Mr. *Leach* and Munshi *Hanuman Prasad*, for the appellant.

Pandit *Nand Lal*, for the respondent.

The judgments of the Judges of the Division Bench were as follows :

SPANKIE, J.—The Assistant Collector in this case referred a rent suit under s. 93 of Act XVIII of 1873, to arbitration by consent of parties. He determined the suit and made his decree in accordance with the award. In appeal the Judge maintained the decree. It is contended in second appeal that, in the absence of any provision in the rent law permitting reference to arbitration, the Assistant Collector had no authority to act as he did act, and that his decree and the decision of the Judge supporting it are bad.

It is argued that s. 96 of the Rent Act expressly authorises reference to arbitration by consent of parties on *applications* made under s. 95 of the Act, but the law is silent as regards arbitration in suits. This is so, and I feel the weight of the argument.

It might perhaps be answered that Revenue Courts, as defined in s. 3 of Act XIX of 1873, published simultaneously with Act XVIII, have general authority under s. 220 of Act XIX of 1873 (which amends and consolidates the law as to land revenue and the jurisdiction of revenue officers), with consent of parties, to refer any dispute before them to arbitration. But the revenue officers who can do so are the Commissioner of a Division, the Collector of a District, an Assistant Collector of the first class, and an Officer in charge of a Settlement, or an Assistant Settlement Officer.

Now Assistant Collectors of the *second* class can try certain suits under Act XVIII of 1873, but they are not included in s. 220 of Act XIX of 1873. To this objection it might be said that, when the Assistant Collector of the second class tries suits under s.

93 of Act XVIII of 1873, within the limits of s. 98, he is practically exercising the full powers of an Assistant Collector of the first class. This, however, would not be a very satisfactory solution of the objection. It is, I think, more probable that the framers of Act XVIII of 1873 either accidentally omitted to provide for reference to arbitration in suits, or overlooked altogether the necessity of doing so. At the same time it might be urged, as indeed the lower appellate Court urges, that it is difficult to "believe that it was in the intention of the Legislature, in enacting s. 96 of Act XVIII of 1873, to deprive parties of an wholesome privilege which they enjoyed before: rather it should seem their intention was to strengthen and extend the privilege by applying to applications a power which before only applied to suits." Be this as it may, I would rest my judgment in this case on the circumstance that, though there is no provision in the Act for a reference to arbitration, there is no prohibition of it. It appears to be the rule that, with few exceptions, if any, now all suits may as a matter of right be referred to arbitration by consent of parties, and it would be intolerable perhaps if litigants were not allowed full liberty to adjust their differences in the mode which, after the case has been taken into Court, might be found most convenient and most likely to lead to a friendly and final settlement of disputes.

This is not a case in which it was sought to divest the ordinary jurisdiction of the Revenue Court. There was no agreement to keep out of Court. The reference to arbitration sprung out of the introduction of the case into Court.

The suit was instituted on the 1st June, 1877: defendant filed a written statement in reply on the 9th July: witnesses were examined on behalf of both parties on the 6th and 16th August: and reference to the arbitrator was made on the 27th August: and after hearing objections against the award, it was made the basis of the decree by the first Court. Under s. 144 of the Act, the Court may, from time to time, in order to the production of further evidence, *or for other sufficient reason* to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit. In some degree this reference to arbitration was adjournment of the case for "sufficient reason," that is to say, to meet the written

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wishes of both parties and to settle the dispute. But the judgment of the Court (s. 151) is in accordance with the provision of the section. With this view of the case, I cannot say, in the absence of any prohibition in the Act to the submission of the record in its final stage to a referee on the motion and by consent of parties, that the suit was not heard and determined in the *manner* provided by the Act, which is all that is obligatory, assuming that there was no illegality, the decision being in accordance with the award.

I would not allow the appeal on the objection taken, but would affirm the judgment of the lower appellate Court.

STUART, C. J.—This is a second appeal to this Court from the judgment of the Judge of Agra, in appeal to him from a decree of the Assistant Collector of Muttra.

The suit was originally instituted in the Court of the Assistant Collector of Muttra, for the recovery of Rs. 484-8-0, principal and interest, on account of arrears of rent for the rabi crop for 1281 fasli ; and in the course of the procedure before that officer the parties filed a consent to refer the matter in dispute to arbitration, upon which the Assistant Collector made an order referring the suit to arbitration accordingly, and an award was made in the plaintiff's favour by an arbitrator, with some alleged irregularities on his part which, however, need not here be referred to, as they are immaterial to the appeal now before us. The Assistant Collector upheld the award and made a decree in conformity with it, and from this decree an appeal was taken to the Judge, in which it was contended, among other things, that there was no provision in the Rent Act, XVIII of 1873, authorising such an arbitration as had taken place in this case, and that the whole proceedings therefore in the disposal of the suit were irregular. This plea the Judge disallowed, and the defendant has now preferred a second appeal to this Court on the same plea, and it is the only reason of appeal before us.

I am of opinion that the Judge is wrong, that the plea is well founded, and that therefore the present appeal must be allowed. In his judgment the Judge appears to me to misapprehend the case before him when he says that it is "a question as to whether an

award willingly resorted to by the parties ought to be set aside;" and he goes on to observe that the present Rent Law, "as is notorious, is very defective in regard to procedure, having been entirely carried through the Legislature by officials who had no judicial experience." Now the material question as regards the arbitration was not whether it was willingly resorted to, but whether, willingly or not, it was a valid and competent proceeding in itself; and as to the Rent Act, it may have its defects, but I do not think it deserving of the sweeping censure passed upon it by the Judge; and in regard to the question in this appeal respecting the arbitration that was ordered and took place, the Act appears to me to be very clear indeed. In my opinion this question must be determined solely with reference to the express provisions of the Rent Act. By s. 93, which is the commencement of "Ch. v, Jurisdiction of Courts," it is provided that "except in the way of appeal as hereinafter 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 this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:" and the very first class of suits mentioned as falling under this absolute and exclusive provision are suits for arrears of rent on account of land, which is the nature of the suit in the present case, and there is not a word in this section about referring suits to arbitration, whether with or without the consent of the parties. Nor is this the less remarkable from the fact that a subsequent s. 96 provides for the reference to arbitration of "applications" as these are enumerated in s. 95. S. 96 provides that all applications under s. 95 "shall be made, &c., and may, with the consent of the parties, be referred to arbitration under sections 220 to 231, both inclusive, of the North-Western Provinces Land Revenue Act, 1873." There is here not a word about the reference to arbitration of the suits mentioned in s. 93, which on the contrary provides that such suits "shall be heard and *determined* in the manner provided by the Act, and *not otherwise*." Of course there is nothing to prevent parties to such suits themselves of their own private consent referring them to arbitration, and agreeing that the award under such a private arbitration shall be binding

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on themselves. But so far as arbitrations of such suits before or by the order and authority of the Revenue Courts are concerned, there is no procedure for, because there is no law authorising, them. On the contrary, s. 93 may fairly in this respect be argued to be prohibitory by force of the absolute and exclusive language of its sanction, the suits mentioned in it being, as I have already pointed out, enacted to be heard and determined in the manner provided and not otherwise. To say the least indeed, this section 93 is abundantly pregnant with a meaning sufficient to exclude references of such suits as the present to arbitration before the Court, and it appears to me plainly to show such an intention. But, on the other hand, such suits are not in the least inconsistent with express provisions for a reference to arbitration, if this had been intended and incorporated with the other provisions of Act XVIII of 1873. We must, however, take that Act as we find it, and a careful examination of it has satisfied me that, giving even the widest meaning to its terms, there can, under s. 93 or any other part of it, be no reference to arbitration before the Court in such a suit as the present.

But it was suggested at the hearing that, although the Rent Act does not provide for the arbitration of such suits, it does not expressly prohibit them, and that it is legitimate to argue in their favour from the provisions as to arbitrations in the contemporaneous Revenue Act, XIX of 1873. By s. 220 of that Act it is provided that a Commissioner of a Division and other Revenue officers mentioned "may, with the consent of the parties, by order, refer any dispute before him to arbitration, and that certain other Revenue officers may, by order, refer any dispute before him to arbitration without the consent of the parties." And the subsequent sections of the Revenue Act, from ss. 221 to 231 inclusive, contain anxious provisions for the regulation of and procedure to be observed in such arbitrations and for the enforcement of awards made in them. Now there can be no doubt that, if such an attempt to supply the supposed defects of the Rent Act, by importing into it the anxious arbitration provisions of the Revenue Act, could be entertained, such an arbitration as was ordered in the present case was a reasonable and valid proceeding, as of course on the same grounds *all* the suits mentioned in s. 93 of the Rent Act could

be referred to arbitration, its exclusive and prohibitory language notwithstanding. But the fair argument is to my mind of a very different and indeed totally opposite nature. For it appears to me that the very fact of these arbitration provisions in the Revenue Act having been left out in the Rent Act, which was passed on the same day, may not only be fairly contended to show, but must be judicially considered by us as showing, that it was not in the mind and intention of the Legislature to allow them, and that the necessary force of the exclusive language of the Rent Act, without the use of any express prohibition on the subject, has this effect.

I must not omit to notice another argument that was used at the hearing against the validity of arbitrations before the Court of suits of the kind described in s. 93 of the Rent Act, XVIII of 1873. That argument was derived from the previous Rent Act, XIV of 1863, and to my mind it has considerable cogency. By s. 14 of the latter Act it is enacted that "the provisions of ch. vi. (relative to arbitration) of the Code of Civil Procedure shall apply to suits under the said Act X of 1859 (the previous Rent Act) and under this Act." So that, until the present Rent Act was passed, there was full provision for a reference to arbitration in such a suit as the present, but there is no corresponding provision in the present Act, and the very fact that it has been left out in the present Rent Act may I consider be allowed to lend no little force to the contention that the express provision of the present Act must be understood as limited in this respect.

Such is the conclusion to which I find myself driven by the language of the present Rent Act, XVIII of 1873. The question before us is not one respecting any principle of rent law, or as to who are or who are not Revenue officers in such a case, but whether Revenue Courts in administering s. 93 of that Rent Act, be the officers who they may, have power to refer the suits therein mentioned to arbitration. To this question there can be but one answer. Most clearly these Courts have no such power, and the order of reference made in the present case, with the recorded consent of the parties, was altogether *ultra vires* of the officer who made it.

At the same time it is difficult to understand why such should be the law, for there appears to be no reason in equity or policy

why such suits as are mentioned in s. 93 of Act XVIII of 1873 should not be referred to arbitration, in the same way that "applications" under s. 96 of the same Act and "disputes" as provided by the contemporaneous Revenue Act XIX of 1873 may be. However, it is not our duty to speculate about these considerations, but to accept and apply this written law as we find it. If the intention of the Legislature was not of the nature which I have, in the way of argument, given it credit for, and there has been an accidental omission in the present Rent Act, this can be supplied by the same legislative authority which passed it; but, however that may be, we, as a Court of justice, bound to interpret and apply the law according to recognised principles of legal construction, can only look for the legislative intention to the letter of the Act itself, and behind or beyond its own terms we cannot go; and that being so, I think it must be conceded that the reasoning I have applied to the present case must be given effect to, and that our judgment should be for the appellant.

I would therefore allow this appeal, setting aside the arbitration proceedings complained of, the award therein, and the orders of both the lower Courts, and I would remand the case for re-trial on the merits under s. 562 of Act X of 1877. The costs of this remand to be costs in the suit, and to abide the result of the re-trial.

The judgment of the Judges to whom the appeal was referred (PEARSON, J., TURNER, J., and OLDFIELD, J.) was delivered by

TURNER, J.—The appellant instituted in the Revenue Court a suit for rent against the respondent. The respondent denied liability to the appellant and questioned the amount. The cause came for trial before Pandit Debi Prasad, an Assistant Collector of the first grade. After evidence had been taken the parties agreed to refer the matters in dispute to the arbitration of a single arbitrator whom they named. *Having* executed an agreement *to this* effect they presented a petition to the Assistant Collector, informing him of the agreement at which they had arrived and praying that the record might be sent to the arbitrator. The agreement was produced in the Revenue Court, and thereupon the Assistant Collector assented to the proposed arbitration and sent the record

to the arbitrator, requesting him to submit his award in a week. The arbitrator ordered the parties to attend on a day named, and when no one appeared for the appellant at the time fixed for the meeting, the arbitrator first recorded a proceeding declining to enter upon the arbitration, but having received a letter from the appellant stating he would attend at 4 P. M., and that the evidence on his part was on the record, the arbitrator withdrew his refusal and proceeded to determine the matters referred to him without any objection being taken on the part of the appellant. A few days after the day named by the Court, the arbitrator submitted an award in favour of the respondent. The appellant objected that the arbitrator having once declined to act had no power to proceed with the reference without a fresh agreement executed by the parties, and that the award could not be accepted inasmuch as it was not submitted within the time appointed by the Court. The Assistant Collector over-ruled both these objections and passed a decree in favour of the respondent on the basis of the award.

The appellant appealed to the District Court respecting the objections he had taken to the award, and urging a new objection that the Rent Act XVIII of 1873 contained no provision for the reference of suits to arbitration, and that the Revenue Court was not otherwise empowered to make the reference. The Judge, pointing out that the parties had willingly resorted to arbitration, considered that the Procedure Code Act VIII of 1859, which was in force when the suit was tried, should be equitably followed in the silence of the Rent Law; that the Legislature could not have intended to deprive parties of a wholesome privilege which they had enjoyed before the Rent Law of 1873 was passed, but that it was rather the intention to extend the privilege by applying it to applications as well as to suits; the Judge also held that the Assistant Collector had rightly over-ruled the objections taken by the appellant in the Revenue Court, no misconduct having been proved on the part of the arbitrator.

The appellant then appealed to the High Court on the ground that, in the absence of a provision in the Rent Act, the Assistant Collector was not competent to refer the case to arbitration, and that no decree could legally pass against him on the award. The

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appeal came for hearing before a Bench composed of His Honor the Chief Justice and Mr. Justice Spankie. (After referring to the judgments of STUART, C. J., and SPANKIE, J., and stating the grounds on which the judgments of these Judges respectively proceeded, the judgment continued:) There is no doubt force in the reasoning of the learned Chief Justice. It is remarkable that, whereas the Legislature had previously to the passing of the Rent Act of 1873 facilitated the reference of matters in dispute to arbitration by the application of the provisions of the Procedure Code to rent suits, and whereas both in respect of applications under the Rent Act of 1873 and in respect of any dispute under the Revenue Act of the same year, special provision had been introduced to facilitate such reference, no similar provision was made in the Rent Act of 1873 regarding the suits triable under s. 93. But unless we are constrained to hold that the words "shall be heard and determined in the manner provided in this Act and not otherwise" necessitate the decision of every suit to which the provision refers after trial by the Court, we are unable to regard the arguments to which we have adverted conclusive. As we understand the general law, parties to suits may, if they are so minded, before issue joined, refer the matter in dispute to arbitration, and after issue joined with the leave of the Court. The special provisions introduced into the Procedure Code and the Land Revenue Act of 1873 did not create this right, but facilitated its exercise and provided for the summary adjudication of questions which might arise respecting the reference and award. Parties to suits and proceedings to which these special provisions have not been applied are not in the absence of special prohibition deprived of the liberty to submit their disputes to arbitration, but they cannot take advantage of the facilities afforded by these provisions, and questions arising out of the reference and on the award cannot be determined summarily.

It is admitted that, unless we are to find it in the terms of s. 93, there is no other provision in the Rent Act which prohibits parties to the suits mentioned in that section from referring the matters in dispute to arbitration. Do then the terms of s. 93, on which His Honor the Chief Justice has laid stress, necessarily impart such a prohibition? We consider that when read with the context they do not constrain us to this conclusion. The object of

the whole clause was to confine the cognizance of the matters therein mentioned to Courts of Revenue, and to prohibit other Courts from taking cognizance of them, and it was declared that such suits as were mentioned in the section should be heard and determined by the Courts of Revenue in the manner provided in the Act and not otherwise, in order the more emphatically to assert the sole jurisdiction of the Courts of Revenue in such matters, and not with a view to deprive the Courts of Revenue of any ordinary power possessed by Courts of Justice, nor the parties of any liberty or privilege which are ordinarily enjoyed by parties to suits.

In the case before the Court, the parties of their own motion consented to a reference, and issues having been joined properly applied to the Court for its sanction. The Revenue Court was in our judgment competent to accord sanction, and on receiving the award to act on it. The appeal should then in our judgment be dismissed, and with costs.

Appeal dismissed.

Before Mr. Justice Turner and Mr. Justice Oldfield.

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BINDA PRASAD (PLAINTIFF) *v.* MADHO PRASAD AND OTHERS (DEFENDANTS).*

Act VIII of 1859 (*Civil Procedure Code*), *s.* 194.—*Decree payable by Instalments—Act X of* 1877 (*Civil Procedure Code*), *s.* 210.

Quære.—Whether "a decree for the payment of money" means merely what is commonly known as a money-decree, or includes a decree in which a sale is ordered of immoveable property in pursuance of a contract specifically affecting such property, within the meaning of s. 194 of Act VIII of 1859 and s. 210 of Act X of 1877.

Where a Court, on the ground that the defendant was "hard pressed," directed the amount of a decree to be paid by instalments extending over ten years and allowed only one half of the usual rate of interest, *held* that there was no "sufficient reason" for directing payment of the amount of the decree by instalments, and that such Court had exercised its discretion injuriously to the plaintiff by the length of the period over which the instalments were extended, and by allowing a rate of interest less than the ordinary rate.

THIS was a suit on a bond for the payment of money which charged certain immoveable property with such payment. This bond was dated the 6th January, 1874, and the obligors, defendants

* First Appeal, No. 61 of 1878, from a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 4th February, 1875.