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or part of the property of the judgment-debtor. The Court ordering execution of the decree might order a sale of other property and not of the hypothecated property. We refer to this in order to avoid any mistake as to our meaning.

Under these circumstances it is not necessary to answer the second question referred to the Full Bench. With this answer the appeal will go back for disposal to the Bench which made the reference.

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March 28.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Burkitt and Mr. Justice Aikman.

SHEO NARAIN RAI AND OTHERS (DEFENDANTS) *v.* PARMESHAR RAI AND OTHERS (PLAINTIFFS).*

Act No. XII of 1881 *(N.-W. P. Rent Act) sections* 36, 39, 95 *(e)*, 96*(b)*—*Jurisdiction—Civil and Revenue Courts—Suit in a Civil Court for a declaration on a question of title decided by a Court of Revenue under section* 39 *of Act No. XII of* 1881—*Res judicata.*

The defendants served a notice of ejectment under section 36 of Act No. XII of 1881 on the plaintiffs, alleging the plaintiffs to be their sub-tenants and themselves to be tenants with a right of occupancy. The plaintiffs objected that they, and not the defendants, were the tenants in chief of the land in question. This objection was decided, under section 39 of the said Act, by a Court of Revenue adversely to the plaintiffs. The plaintiffs thereupon sued in a Civil Court for a declaration that they were tenants with a right of occupancy and for maintenance of possession.

Held that, inasmuch as section 96 (*b*) of Act No. XII of 1881 gave to a decision of a Court of Revenue under section 39 the effect of a judgment of a Civil Court, the hearing of the plaintiffs' present suit by a Civil Court was barred.

The principle of the decision in *Tarapat Ojha* v. *Ram Ratan Kuar* (1) affirmed.

The jurisdiction of Civil Courts and Courts of Revenue in the North-Western Provinces considered.

THIS was a reference to the Full Bench made by an order of a Division Bench dated the 30th of May 1894.

The facts of the case sufficiently appear from the judgment of the majority of the Court

Munshi *Gobind Prasad* for the appellants.

Munshi *Jwala Prasad* for the respondents.

* Second Appeal No. 543 of 1893 from a decree of Pandit Bansidhar, Subordinate Judge of Ghazipur, dated the 17th April 1893, reversing a decree of Babu Srish Chandar Bose, Munsif of Ghazipur, dated the 24th December 1892.

(1) I. L. R., 15, All., 387.

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EDGE, C. J., KNOX, BLAIR, BANERJI and BURKITT, JJ.—In the suit in which this second appeal has been brought the question between the parties is whether the plaintiffs or the defendants are the tenants at fixed rates of certain lands to which Act No. XII of 1881 applies. The plaintiffs allege that they are the tenants at fixed rates of the land in question. On the other hand, the defendants allege that they are the tenants at fixed rates of those lands and that the plaintiffs were their under-tenants. The defendants had, under section 36 of Act No. XII of 1881, caused a written notice of ejectment to be served upon the plaintiffs in respect of those lands. The plaintiffs within thirty days of the service upon them of the notice of ejectment made an application to the Collector of the district contesting their liability to be ejected and denying that they were tenants of the defendants and alleging that they, and not the defendants, were the tenants in chief under the zamindar of the lands. The Collector, under section 39 of the Act, determined adversely to the plaintiffs the question of their liability to be ejected on the notice of ejectment which the defendants had caused to be served on the plaintiffs. Thereafter the plaintiffs brought this suit praying for a declaration of their right as the tenants of the holding and for maintenance of possession. The defendants pleaded that they, the defendants, were the tenants at fixed rates of the land and that the plaintiffs were their under tenants. The defendants also pleaded the decision of the Collector under section 39 of Act No. XII of 1881 as a bar to this suit.

The Munsif, held that the suit was one for the Civil Court, but dismissed it for other grounds.

The plaintiffs appealed. The Subordinate Judge allowed the appeal. From that decree the defendants brought this appeal.

When the appeal was called on for hearing it was admitted by the vakíl who appeared for the defendants that the third ground in the memorandum of appeal, which was that the proviso to section 42 of the Specific Relief Act barred the suit, could not be supported on the facts. The appeal was thereupon referred to the Full Bench on the remaining two grounds in the memorandum

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of appeal, which were that section 95 of Act No. XII of 1881 barred the suit, and that the decision of the Court of Revenue on the question as to the liability of the plaintiffs to be ejected was final and could not be questioned in this suit.

For the defendants it was contended that the principle of the Full Bench decision in *Tarapat Ojha* v. *Ram Ratan Kuar* (1) applied in this case, and it was further contended that, even apart from that Full Bench decision, section 95 of Act No. XII of 1881 barred this suit, and that the decision of the Court of Revenue on the title of the parties was conclusive.

On the part of the plaintiffs it was contended that the question as to whether or not the Civil Court had jurisdiction to hear this suit and to determine it contrary to the decision of the Court of Revenue was not concluded by the principle of the Full Bench decision above referred to; and further, that the Civil Court had jurisdiction to hear the suit and was not bound by the decision of the Court of Revenue.

In addition to the Full Bench case already referred to, the following authorities were cited in the argument:—*Fakeer Koree* v. *Sheo Sarun Singh and Behroom Singh* (2), *Gooroo Doss Roy* v. *Bishtoo Churn Bhuttacharji* (3), *Dhonaye Mundul* v. *Arif Mundul* (4), *Juddoonath Sein* v. *Ram Soomar Chattarjee* (5), *Janessur Doss* v. *Goolzaree Lall* (6), *Khugowlee Sing* v. *Hossein Bux Khan* (7), *Mata Parshad* v. *Janki* (8), *Musammat Ghisa* v. *Didari* (9), *Shimbhu Narain Singh* v. *Bachcha* (10), *Husain Shah* v. *Gopal Rai* (11), *Kanahia* v. *Ram Kishen* (12), *Gopal* v. *Uchabal* (13), *Sukhdaik Misr*, v. *Karim Chaudhri* (14), *Birbal* v. *Tika Ram* (15), *Palat Kuari* v. *Bhinak Kuari* (16), *Lalji* v. *Nuran* (17), *Ribban* v. *Partab Singh* (18), *Antu* v. *Ghulam*

(1) I. L. R., 15 All., 387.
(2) S. D. A., N.-W. P., Vol. 2 for 1862, p. 221.
(3) 7 W. R. C. R., 186.
(4) 9 W. R. C. R., 306.
(5) 9 W. R. C. R., 359.
(6) 11 W. R. C. R., 216.
(7) 7 B. L. R., 673.
(8) 7 N.-W. P., H. C. Rep., 226.
(9) 7 N.-W. P., H. C. Rep., 256.
(10) I. L. R., 2 All., 200.
(11) I. L. R., 2 All., 428.
(12) I. L. R., 2 All., 429.
(13) I. L. R., 3 All., 51.
(14) I. L. R., 3 All., 521.
(15) I. L. R., 4 All., 11.
(16) Weekly Notes, 1881, p. 26.
(17) I. L. R., 5 All., 103.
(18) I. L. R., 6 All., 81.

Muhammad Khan (1) *Sheodisht Narain Singh* v. *Rameshar Dial* (2), *Arjan* v. *Rattu* (3), *Mahesh Rai* v. *Chandar Rai* (4), and *Sakina Bibi* v. *Swarath Rai* (5). Wilberforce on the Construction of Statutes, p. 15, was also referred to.

This is one of that class of cases which exemplifies the mischief which arises when the jurisdiction of Courts created by the Legislature is not plainly and explicitly and sharply defined. That mischief is intensified when, as in these Provinces, there are two sets of Courts, the Courts of Revenue and the Civil Courts, each having in some matters exclusive jurisdiction, whilst as to other matters the question as to which of such Courts has exclusive jurisdiction depends, not upon plain and explicit language of the Legislature, but upon inferences to be drawn from a painstaking examination of a variety of sections in an Act and upon general principles of jurisprudence upon which it is assumed that the Legislature has acted.

It may be assumed that the Legislature did not, in creating in these Provinces Civil Courts and Courts of Revenue, intend to cause confusion by conferring upon those Courts conflicting jurisdiction in any case, and did not intend, for example, that a question of title to land should be litigated in a Court of Revenue from the Collector through the Commissioner up to the Board of Revenue, and that the same title to the same land should subsequently be litigated between the same parties from the Court of a Munsif through the Court of a District Judge up to the High Court, and possibly to her Majesty in Council.

It may also be assumed that the Legislature did not intend to confer upon Civil Courts and upon Courts of Revenue any concurrent jurisdiction in particular cases where the title to lands was in question without making some provision by which the decrees and the decisions of one of such Courts on such matters should be binding upon the other of them.

(1) I. L. R., 6 All., 110.
(2) I. L. R., 7 All., 188.
(3) Weekly Notes, 1886, p. 122.
(4) I. L. R., 13 All., 17.
(5) I. L. R., 15, All., 115.

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The Act which we have to construe for the purposes of this case is Act No. XII of 1881.

It is quite clear that Act No. XII of 1881 provides no means by which a zamindar can obtain ejectment from his land of a trespasser and that for the ejectment of a trespasser recourse must be had to a suit in a Civil Court.

It is also quite clear from section 95 of that Act that the Civil Court has no jurisdiction, except in cases within the proviso to section 40 of Act No. XII of 1881, to decree at the suit of a zamindar ejectment of his tenant from land to which that Act applies, the exclusive jurisdiction in such a case being in the Court of Revenue. It is also clear that if, in a notice of ejectment served under section 36 of Act No. XII of 1881, or at the hearing under section 39 of an application by the person served with a notice of ejectment under section 36 contesting his liability to be ejected, it appeared that the person sought to be ejected was not a tenant within the meaning of sections 36 and 39, the Court of Revenue would have no jurisdiction to decide adversely to the applicant his application under section 39 contesting his liability to be ejected, and in such case the Court of Revenue would have no jurisdiction under section 40 to make any order of ejectment. It is equally clear that if in the plaint or at the hearing of a Civil suit it appeared that the person sought to be ejected was a tenant of the plaintiff of land to which Act No. XII of 1881 applied and that the proviso to section 40 of Act No. XII of 1881 did not apply to the case, the Civil Court would have no jurisdiction to decree ejectment. It is also clear that, whether the proceedings in ejectment were proceedings under sections 36 and 39 of Act No. XII of 1881 for the ejectment of a person who denied that he was a tenant and set up title in himself, or were by suit in a Civil Court in which the person said by the plaintiff to be a trespasser alleged that he was the plaintiff's tenant of land to which Act No. XII of 1881 applied, the Court of Revenue in the first case and the Civil Court in the second would have to try and determine the question in dispute between the parties as to title in order to ascertain whether the

Court had jurisdiction to grant relief, in the one case to the person who had, under section 36, caused the notice of ejectment to be served, and in the other case to the plaintiff in ejectment in the Civil suit. It frequently happens that a Court of Revenue and a Civil Court come to different conclusions on the same question of title litigated between the same parties in reference to the same lands. In such case, which decision is to prevail? Is that decision to prevail which was first given, or is that decision to prevail which was given in the proceeding or suit first instituted, or is the time of one of such Courts to be taken up in arriving at a decision which when pronounced will not be binding on the other Court and will be for all practical purposes a *brutum fulmen?* How is such decision to be enforced? It is clear that, unless a question of title arising in proceedings in ejectment under Act No. XII of 1881 had been determined between the parties by a reference to a Civil Court under section 204 of that Act or in a suit instituted in accordance with an order of a Court of Revenue made under section 208A of that Act, the Court of Revenue would not be bound by the finding as to title of a Civil Court. The decision of an issue as to title by a Civil Court would not operate as *res judicata* under section 13 of Act No. XIV of 1882 as to the same question of title in proceedings under sections 36 and 39 of Act No. XII of 1881, although between the same parties and relating to the same land; and similarly a decision of a Court of Revenue under section 39 of Act No. XII of 1881 adverse to the application under that section contesting the liability of the person upon whom a notice of ejectment had been served would not operate as *res judicata* under section 13 of Act No. XIV of 1882, in a suit of ejectment in a Civil Court between the same parties, the Court of Revenue not having jurisdiction to try a suit to eject a trespasser, and a Civil Court not having jurisdiction to try an application under section 39 of Act No. XII of 1881, contesting liability to ejectment.

Except where there has been an appeal allowed under section 189 of Act No. XII of 1881, except when the procedure of section 204 or of section 208A of Act No. XII of 1881 has been applied, and

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except where the right to institute a suit in the Civil Court is specifically provided for in that Act, no provision has been made by the Legislature binding a Court of Revenue to accept the decision on a question of title of a Civil Court. Except in suits appealable under section 189 of Act No. XII of 1881 a Court of Revenue is in no sense subordinate to any Civil Court, and consequently is not bound to accept *as a subordinate Court* the decision of any Civil Court, except when the decision has been passed in such an appeal.

Let us see what may be the result of the conflict of jurisdiction in this case. The Court of Revenue, having upon the application made by the plaintiffs-respondents under section 39 of Act No. XII, 1881, decided the question of their liability to be ejected upon the notice which the defendants-appellants had caused to be served upon them, the plaintiffs-respondents, is bound, if called upon for assistance by the defendants-appellants under section 40 of Act No. XII of 1881, to order the ejectment of these plaintiffs-respondents, and, so far as the Court of Revenue is concerned, the principle of *res judicata* would make applicable its decision under section 39 of Act No. XII of 1881, and not the decision of the Civil Court, should these plaintiffs-respondents dispute either the jurisdiction of the Court of Revenue to order under section 40 their ejectment or the title or right of the defendants-appellants to obtain an order of ejectment under section 40. In any proceeding under section 40 the decree of the Civil Court which decided that the plaintiffs-respondents were not tenants of the defendants-appellants but were the tenants at fixed rates of the land would be a mere *brutum fulmen*.

The Civil Court could not compel the Court of Revenue or the executive officers or these defendants-appellants to recognize the plaintiffs-respondents as the tenants at fixed rates of the land in question. The Civil Court has no power to order an alteration of the entry in the village papers by which the defendants-appellants appear as the tenants at fixed rates of the land or to enforce such an order if it made it.

As it is not conceivable that the Legislature could have intended that there should be of its own creation two sets of Courts in these Provinces, each having jurisdiction to determine the same questions of title to land let to agricultural tenants and neither having any power to compel the other to accept its decision by revision or other procedure or by process, we must assume that in all cases in which it is clear that for the purposes of adjudicating upon an application or making a decree in a suit it was the intention of the Legislature that the decision on the question of title of the Court which was given the exclusive jurisdiction to entertain the application or the suit which would necessarily lead to the maintenance of the entries in the village papers forming part of the record of rights, or to the correction of those entries, should, subject to such rights of appeal as was allowed by the Statute, be final between the parties unless the contrary intention was expressed. The Civil Court has no jurisdiction to frame or alter, although it may interpret, the record of rights. The jamabandi of the village is a part of the record of rights. Many of the suits mentioned in section 93 of Act No. XII of 1881 would depend in the first instance for their maintenance upon the entries made in the record of rights of the village; as, for example, suits under clause (*g*) or clause (*h*) or clause (*i*) or clause (*k*) of section 93. Section 241 of Act No. XIX of 1873, excludes the jurisdiction of the Civil Courts over any of the matters in that section mentioned, and amongst such matters are the amount of revenue, cess or rate to be assessed on any mahal or part of a mahal, the formation of the record of rights, the determination of the class of a tenant, or the rent payable by him, or the period for which such rent is fixed under Act No. XIX of 1873, the distribution of the land or allotment of the revenue of a mahal by partition and the determination of the rent to be paid by a co-sharer for land held by him after the partition in the mahal of another co-sharer. The jurisdiction of Civil Courts to try suits of a civil nature which were instituted after the coming into force of Act No. XIV of 1882 was conferred by section 11 of that Act. That section is as follows:—"The Court shall

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(subject to the provisions herein contained) have jurisdiction to try all suits of a Civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force."

By the first paragraph of section 93 of Act No. XII of 1881 it is enacted—"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 suit shall be heard and determined in the said Courts of Revenue in the manner provided in this Act and not otherwise." By the first paragraph of section 95 of Act No. XII of 1881 it is enacted as follows:—"No Courts other than Courts of Revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made; and such applications shall be heard and determined in the said Courts in manner provided under this Act and not otherwise." Section 189 of Act No. XII of 1881 gives in certain cases an appeal to the District Judge or the High Court from the decision of the Collector of the District or Assistant Collector of the first class in all suits mentioned in section 93. One of the cases in which by section 189 an appeal lies to the District Judge or the High Court is where the proprietary title to land has been determined between parties making conflicting claims thereto. No appeal to any Civil Court is given from the decision of a Court of Revenue on any application of the nature mentioned in section 95. Applications in ejectment made under sections 38, 39 or 40 are applications specifically mentioned in section 95. In the proviso to section 40 it is enacted that in certain specified cases, of which this is not one, the landholder seeking ejectment of a tenant must proceed by suit in a Civil Court.

The proviso to section 148 prevents the decision of a Court of Revenue in certain suits for arrears of rent under section 93 being conclusive as to the title to receive the rent, provided a suit to establish the title is brought in a Civil Court within one year of the decision of the Court of Revenue. To section 84 there is appended a similar proviso. Section 170 enables any person

injured by the irregularity in publishing or conducting a sale of movable property under an execution held under that Act to recover compensation for such injury by a suit in a Civil Court. Section 181 enables the party against whom an order by a Collector of a District is made under section 179 or section 180, to institute a suit in a Civil Court to establish his right at any time within one year from the date of the order. Section 204 enables a Court of Revenue to obtain the opinion of the District Judge upon a case stated, "if, in any suit instituted or on any application made under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a Civil Court," and enacts that an appeal shall lie from the judgment of the District Judge to the High Court, and that "the District Judge shall return the case with the opinion of the Civil Court to the Collector of the district, and the Revenue Courts shall decide the suit or application in accordance with such opinion."

Section 208A is as follows:—"If in any suit or application pending before a Revenue Court exercising original, appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a Civil Court, such Revenue Court may by order in writing require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the Civil Court with a view to obtaining a decision of such question; and if he fails to comply with such requisition, shall decide such question against him. If he institute such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the Civil Court of first instance or appeal (as the case may be) upon such question.

Section 208A first appeared in Act No. XII of 1881. It and section 204 are of importance as they indicate that the Legislature considered that questions might arise in suits under section 93 and on applications under section 95 which would be more proper for decision by a Civil Court than by a Court of Revenue; but the Legislature did not exclude such cases from the jurisdiction of the

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Courts of Revenue, nor, except at the instance and on the motion of the Court of Revenue, did the Legislature confer any jurisdiction except in some cases by way of appeal, upon Civil Courts in such cases. It had been held in many cases which were decided on Act No. X of 1859 and Act No. XVIII of 1873, that, notwithstanding the provisions of those Acts, questions of title were to be decided by suits in the Civil Courts and not by the Courts of Revenue. The enacting of section 208A enabled Courts of Revenue in cases reserved for their jurisdiction to have questions of title determined by a suit in a Civil Court. That section, coupled with the assignment by the Legislature to Courts of Revenue of exclusive original jurisdiction in suits to which section 93 relates, and of exclusive jurisdiction in such matters and disputes as are referred to in section 95, satisfies us that in such cases it was the intention of the Legislature that no suit should lie in the Civil Court except when an order is made under section 208A or the right of suit in the Civil Court is otherwise expressly given or reserved by the Act. Courts of Revenue, so far as we are aware, have seldom taken advantage of the provisions of section 204 or of section 208A. Judging by the number of Civil suits in which it has been sought to question the decisions of Courts of Revenue on title, and in which questions of title of importance have been *bonâ fide* raised, it would appear that Courts of Revenue have either overlooked sections 204 and 208A, or are of opinion that the presiding officers of Courts of Revenue are as well qualified by a knowledge of and experience in the law to decide points of law and questions of title as are the Civil Courts. Whatever the cause may be, there is no doubt that sections 204 and 208A are practically treated by Courts of Revenue as if they had been repealed, and parties are deprived of the benefit of having difficult points of law and important questions of title decided by the Civil Courts with a right of appeal as a last resort to Her Majesty in Council. That such was not the object of the Legislature is manifest. It may be inferred from a long series of decisions, some of which were on Act No. X of 1859, some on Act

No. XVIII of 1873 and the remainder of which were on Act No. XII of 1881, that the opinion was entertained by all the Judges who in these Provinces or in the Lower Provinces of Bengal have considered the question, that questions of proprietary title to land and of title to tenancies between rival claimants, but not questions as to the status of a tenant of agricultural land, are questions which should be determined by the Civil Courts and not by the Courts of Revenue in the more or less summary proceedings of the latter Courts. With the following exception, we entirely agree with that opinion. In our opinion whenever in suits to which section 93 of Act No. XII of 1881 relates, or in matters or disputes to which section 95 relates, the relationship of landlord and tenant between the parties or between those through whom they claim had not been admitted, as for example, by the granting and acceptance of a lease of the land, by payment of rent in respect of the land, or by time having been asked and given for the payment of rent in respect of the land, and the relationship of landlord and tenant between the parties or those through whom they claim had not been established in previous litigation, it should be compulsory on the Court of Revenue to pass an order staying the proceedings before it for a limited time within which the party denying that the relationship of landlord and tenant existed might bring a suit in a Civil Court to determine the question of title. If no such suit should have been brought within a limited time the Court of Revenue should, without further inquiry, decide finally the question of title against the party who had denied that the relationship of landlord and tenant existed. If such suit were brought, the Court of Revenue should be bound to accept the result of that suit as determining the question of title, whether the suit was determined in the Civil Court by a dismissal for default or upon an adjudication on the questions of title. A preferable course would be that the Legislature should introduce in Act No. XII of 1881, provisions similar to those contained in sections 113, 114 and 115 of Act No. XIX of 1873. If this latter course were adopted, a vast amount of litigation arising out of the present uncertainty as to jurisdiction

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would be obviated, and a decision on all questions of title could be obtained from the Civil Court either in appeal or by suit. It is not in the power of this Court to give to Civil Courts a jurisdiction which has not been given to them or of which they have been deprived by the Legislature.

It is quite clear from a careful perusal of Act No. XII of 1881 that, although in the suits mentioned in section 93, in which proprietary title to land has been determined between parties making conflicting claims thereto, the party aggrieved by such determination can by appeal obtain the decision of the Civil Court upon the question of title, and can, in a suit for rent to which section 148 applies, obtain by suit the decision of a Civil Court on the question of title, yet if the same question of title happens to be decided between the same parties on an application to which section 95 applies, and not in a suit under section 93, the party aggrieved by such determination of the question of title cannot, either by appeal or by suit, obtain the decision of the Civil Court upon the question of title, unless indeed the Court of Revenue sees fit to take advantage of the provisions of section 204 or of section 208A.

The question of title which may be decided by a Court of Revenue under section 39 may be the title to a large zamindari or it may be the title, as in this case, to a tenancy at fixed rates. It may be doubted, we do not decide the question, whether the words "proprietary title" in section 189 include a title such as that in dispute in this case to a tenancy at fixed rates; if they do not, then, unless the amount or value of the subject matter exceeds one hundred rupees, or the suit in the Court of Revenue is one in which the rent payable by the tenant has been a matter in issue and has been determined, the party aggrieved by an adverse determination of the Court of Revenue as to his title has no means by which as of right he can in appeal or by suit obtain the decision of a Civil Court as to his title to the tenancy, although, for example, that title may depend on the determination of a difficult question as to the law of adoption. That is an anomalous state of the law, which was probably not foreseen in all its bearings by the Legislature, and for

which the permissive provisions of s. 204 and 208A, as they stand in the Act, do not afford a remedy, as they are rarely, if ever, taken advantage of. The remedy is for the Legislature, which can, if it sees fit so to do, either give a right of appeal to, or a right of suit in, a Civil Court on all questions of title coming before a Court of Revenue, or can alter sections 204 and 208A so to make it obligatory on a Court of Revenue to refer all disputes as to title to a Civil Court when the relationship of landlord and tenant between the parties or between those through whom they claim had not been admitted, or in which the parties were not estopped by their acts or by the acts of those through whom they claim or otherwise from denying that such relationship existed. In case of an alteration of sections 204 and 208A it would probably be necessary to allow an appeal to a Civil Court from the refusal of a Court of Revenue upon a request in writing made to refer the question of title to a Civil Court.

In the present case there stands in the way of any adjudication by the Civil Court on the question of title the order of the Court of Revenue made upon an application falling under clause (*e*) of section 95 of Act No. XII of 1881. As clause (*b*) of section 96 gives to that order the same effect as if it was a judgment of the Civil Court, that order cannot be questioned by a Civil Court. It follows that this appeal must be allowed and the suit must be dismissed.

As it appears to us that the principles which were applied by the Full Bench in *Tarapat Ojha* v. *Ram Ratan Kuar* (1) apply in this case, we would not have gone at length into an explanation of our views in this case, were it not that we considered it advisable that our views on the frequently recurring conflicts of jurisdiction and our reasons for those views should be thoroughly understood.

The cases to which we have been referred which were decided prior to the decision in *Ribban* v. *Partab Singh* (2) were decided on one or other of the Acts which preceded Act No. XII of 1881. In *Ribban* v. *Partab Singh* (2) and in the subsequent cases which

(1) I. L. R., 15, All., 387. (2) I. L. R., 6, All., 81.

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were relied upon to show that this suit would lie, the learned Judges do not appear to have considered what was the intention of the Legislature in passing Act No. XII of 1881 to be inferred from section 208A of that Act read in conjunction with the other sections of the Act to which we have referred.

We allow this appeal and dismiss the suit with costs in all Courts.

AIKMAN, J.—I concur with the learned Chief Justice and my brother Judges in thinking that this appeal must be allowed. I also concur in almost everything that has been said in the judgment just delivered. I trust that the effect of that judgment will be to put a stop to the hitherto too frequently recurring scandal of a party litigating a case through all the grades of the Revenue Courts, and, after failing there, dragging his adversary to the Civil Courts to litigate again exactly the same question as had been decided against him in the Revenue Courts. If, however, any fresh legislation is undertaken, then in my humble opinion it should be provided that whilst no decision of a Revenue Court, either in a suit or on an application, shall have the effect of finally determining the proprietary title to land, all questions as to the tenant right to an agricultural holding shall, subject to the safeguards of sections 204 and 208A of Act No. XII of 1881, to the too much neglected provisions of which the judgment just delivered will, I trust, have the effect of directing attention, be for the Revenue Courts, and for those Courts alone; and that, when the pleadings in a Civil suit raise the issue whether a party is or is not a tenant of such a holding, that issue shall be referred to a Court of Revenue for trial.