

when the compromise was carried out, to bring a suit to get the money back. He must have known that Manni Lal regarded the money as having been paid *pro tanto* as a discharge of his debt to Mahadeo Prasad. In my opinion the Raja could not in equity enter into the compromise with the intention of bringing a suit to recover this sum of money, without making it one of the terms of the compromise, that the compromise was entered into without prejudice to his right to recover the Rs. 975. In other words, the compromise undoubtedly involved on the part of the creditors the payment of a sum of Rs. 4,975, and the Raja was perfectly well aware of that fact when he entered into the compromise. That being so this action is an abuse of the process of the court and therefore ought to be dismissed..

BY THE COURT.—The order of the Court is that we allow both these appeals, set aside the decrees of both the courts below and dismiss the plaintiff's suit with costs throughout.

*Appeal decreed.*

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

STRAUSS AND COMPANY (DEFENDANT) v. RAGHUBAR DAYAL,  
DURGA PRASAD (PLAINTIFFS).\*

*Act No. IX of 1899 (Indian Arbitration Act), section 19—Subject matter of pending suit referred to arbitration—Order under section 19 staying suit—Arbitration ending in an award—Formal order (revoking stay and dismissing suit unnecessary.*

Ordinarily, a stay order passed by a court under section 19 of the Indian Arbitration Act, 1899, when the matters in dispute in a suit before it have been referred to arbitration is permanent, and when the arbitration is completed there is no necessity for the court to revoke the stay order and pass a formal order dismissing the suit. *Sheo Babu v. Udit Narain* (1) referred to.

THE facts of this case sufficiently appear from the order of the Court.

Mr. B. E. O'Connor, and Munshi Durya Prasad, for the appellant.

Munshi Gulzari Lal, for the respondent.

PIGGOTT and WALSH, JJ.:—This appeal and the connected revision No 40 of 1920, are brought against an order of the District Judge of Cawnpore, dated the 21st of February, 1920.

\* First Appeal No. 67 of 1920, from an order of L. S. White, District Judge of Cawnpore, dated the 21st of February, 1920.

(1) (1914) 12 A. L. J., 757.

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On the 27th of August, 1919, he had stayed a suit upon the ground that the parties had submitted the matter to arbitration in accordance with the terms of the contract between them. In the meanwhile an arbitrator had been appointed, an award had been made, and a decree passed in pursuance of the award. For some reason or another the present respondents made an application on the 21st of February to remove the stay of the 27th of August. The learned Judge obviously felt great difficulty about it and with considerable reluctance finally made an order removing the stay which he himself had granted, the effect of which was to revive the suit, although the matter had been disposed of according to law by arbitration. The defendant appeals from that order. In support of the learned Judge's order it is suggested that in any event, even in a case where the matter in dispute has been referred to arbitration, if a suit has been instituted, it is necessary that there should be a final decree dismissing the suit. If that were the correct view, clearly the stay would have to be removed before any final decree could be passed. We have come to the conclusion that no final decree is necessary. Without saying that there are no cases in which a stay could possibly be removed—for example, the parties by consent might decide to drop the arbitration and relegate their dispute to the courts of law; in such a case, by the consent of parties, no doubt a stay could be removed—it is clear that where the circumstances are the same, as they were in this case, as at the time when the stay was originally imposed, the Judge is *functus officio*, and cannot reverse his own order.

If the order of the 21st of February had not been made or if it were now reversed, the original stay order of the 27th of August would remain in force. Ordinarily a stay is permanent unless the order directing it provides otherwise by imposing some terminus. In the case of *Shoo Babu v. Udit Narain* (1), to which we were referred in the course of argument, it was suggested that my brother PRIGGOTT had said that the suit in such a case would have to be formally dismissed upon a finding that the matter had been otherwise disposed of. While agreeing with everything which was said in that case, we do not think that it was

(1) (1914) 12 A. L. J., 757.

intended to lay down any definite practice on this particular matter, which was not necessary for the decision. We have consulted the learned Judge of the English department, and we have come to the conclusion that a stay order under section 19 of the Arbitration Act, when arbitration has in fact taken place, is sufficient finally to dispose of the suit. The intention of the Legislature was to oust the jurisdiction of the ordinary courts, and any procedure other than that provided by the Arbitration Act in matters which are referred to arbitration, would only create difficulty and confusion. There ought to be no difficulty so far as the file and records in the lower court are concerned in disposing of the suit which has been stayed. We would only further observe that it is satisfactory to note that the dispute arising out of this contract was disposed of by a decree within less than six months from the institution of the suit. The appeal and revision of the defendant against the order of the 21st of February, must be allowed with costs and the learned Judge's order set aside.

*Appeal allowed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

ABDUS SAMAD v. YUSUF \*

*Act No. XIII of 1859 (Workmen's Breach of Contract Act), section 2—Summary trial—Offence—Criminal Procedure Code, section 260, 4(o).*

A case under section 2 of the Workmen's Breach of Contract Act, 1859, is triable summarily under the provisions of section 260 of the Code of Criminal Procedure. *Queen Empress v. Indarjit* (1) referred to. *Emperor v. Dhondu* (2) and *Emperor v. Balu Saluji* (3) dissented from. *Pollard v. Mothial* (4) and *Queen Empress v. Kattayan* (5) distinguished

THE facts of this case appear from the order of the Court.

Munshi *Janki Prasad*, for the applicant.

The opposite party was not represented.

PIGGOTT and WALSH, JJ. :—In this case the complainant, a master, made a complaint before a magistrate of the first class

\* Criminal Reference No. 615 of 1920.

(1) (1889) I. L. R., 11 All., 262. (3) (1908) I. L. R., 33 Bom., 25.

(2) (1904) I. L. R., 33 Bom., 22. (4) (1881) I. L. R., 4 Mad., 234.

(5) (1897) I. L. R., 20 Mad., 235.

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