stood possessed of property to the value of Rs. 1,250. The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

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JAGAT SINGH v. BALDEO PRASAD.

FULL BENCH.

Before Justice Sir George Knox, Mr. Justice Piggott and Mr. Justice Gokul Prasad.

IN THE MATTER OF A. JOHN AND COMPANY AND ANOTHER.*

1920 *July*, 15.

Act No. VII of 1918 *(Indian Income-Tax Act), sections* 8, 9 *and* 11—*Income-tax—Kinds of property assessable—Allowance in respect of annual value of business premises owned by the firm—"House property."*

Held by KNOX and GOKUL PRASAD, JJ., (PIGGOTT J., *dubitante*) that as Act No. VII of 1918 (the Indian Income-Tax Act) now stands the allowance on account of the annual value of business premises owned and occupied by a firm is not liable to assessment at all.

Per PIGGOTT, J., *Sed quaere* whether such business premises would not fall within the purview of section 8 of Act No. VII of 1918 as being "house property."

"THIS was a reference made by the Chief Revenue Authority of the United Provinces under section 51 of Act No. VII of 1918 (the Indian Income-Tax Act). The facts out of which the reference arose are fully stated in the following order :—

"This is a case of a reference to the High Court from the Chief Revenue Authority under section 51 of the Indian Income-Tax Act, 1918, on the request of Messrs. A. John and Company, a firm carrying on business in Agra."

[Paragraphs 2 and 3 of the order of reference contained statements of values in detail and are omitted as being of a confidential nature and not essential to the determination of the matter in issue.]

"4. Messrs. John and Company objected to the inclusion of the annual value of the business premises, as section 9 (2) (*i*) of the Income-Tax Act allowed a deduction of this sum to be made from the profits of the business. The Collector of Agra, however, held that the sum, while being deducted from the profits of the business under section 9 (2) (*i*), must be treated as income under another head, *i.e.* as house property. Mr. Morris, the Income-Tax Commissioner, before

* Civil Miscellaneous No. 279 of 1920.

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whom an objection against the Collector's assessment was presented, agreed in principle with the Collector. A copy of his order, dated the 8th of January, 1920, is appended. Mr. Morris added that even if the items were regarded as not liable to assessment under section 8 they would be liable under section 11."

[Paragraph 5 is omitted for the same reasons as were paragraphs 2 and 3.]

"6. The Chief Revenue Authority, however, feels considerable doubt whether mill premises can be treated as house property for the purposes of section 8. In its view the whole tenor of that section concerns property of the nature of residential property, and the proviso itself reflects the rule, applicable to officials residing in houses constructed by the Government, that the rent shall not exceed ten per cent. on their salary. To apply a ten per cent. limitation to a business like a jute or cotton mill is to subsidize business at the expense of the general tax payer and it is very doubtful if such a course was contemplated. This view is supported by the rule made by the Government of India regarding section 24 (1) of Act II of 1886 in which it is said:—'The amount to be assessed under section 24, sub-section (1), of the Act on account of a building occupied by the owner thereof shall not in any case exceed ten per cent. of the aggregate income of the owner derived from all sources. It must not, however, be understood from this that a maximum of ten per cent. of the aggregate income of the owner is to be assumed in every case as equivalent to the letting value of his house. The letting value should in all cases be ascertained on the best data available, in view of the circumstances of the locality in which the house is situated.'

The Board of Revenue as Chief Revenue Authority further held that the profits received from the occupation of a house by a Company did not fall under Part D of Chapter III of Act II of 1886 (*i. e.* "other sources of income"), that section 24, falling as it did within part D, was not applicable, and that such profits were assessable under section 11 of the Act (*i.e.* "profits of Companies").

"The Chief Revenue Authority is further supported in its view by the fact that clauses (iii) and (v) of section 8, and clauses (iv) and (viii) of section 9(2), of the Act of 1918 deal with the same classes of expenditure, insurance premia and a charge of land revenue, thus implying that house property and business premises are in different categories, and by the differentiation in the incidence of local rates and municipal taxes [clause (viii) of section 9 (2)] which are fairly an item of expenditure in a business but are invariably held to fall on the owner of house property.

"The Select Committee of the Imperial Legislative Council which considered the Act before it became law also held the same opinion on the latter point, for they said,

'. . . The inclusion of local rates and Municipal taxes among the permissible allowances has also been much pressed upon us, and, recognizing that they form a legitimate business expense, we have permitted an allowance for them in clause 9(2) (viii). We are, however, unable to agree that these rates and taxes should be deducted from the income from house property, since in that case they partake of the nature of personal expenses of the owner.'

"7. The main point, however, in the reference to the High Court is whether the allowance on account of the annual value of business premises owned and occupied by the assessee is liable to assessment at all. The grant of this allowance is new to the present Act and has not been referred to either in the Statement of Objects and Reasons, attached to the Bill, or in the proceedings of the Select Committee, or in the debates in Council. The allowance would seem to be based on the provisions of the British Income-Tax law. The present British Income-Tax Act, 1918 (8 and 9 Geo. 5, C. 40), enacted after the Indian Income-Tax Act came into force, allows a deduction under Schedule D, but the amount allowed is assessable under Schedule A.

"8. The Chief Revenue Authority holds that the *bonâ fide* annual value of business premises, though its deduction is allowed in calculating the "income derived from business," is income in another form; and as all income, with certain

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exceptions, is made subject to the provisions of the Income-Tax Act by the provisions of section 3 (1), the income is assessable. As section 8, in the opinion of the Chief Revenue Authority, is not applicable, it follows that the income is assessable under section 11. The Chief Revenue Authority freely admits the difficulties inherent in section 9 (2). The condition precedent to the grant of an allowance is that sums shall be paid or, in the case of depreciation, debited in the accounts of the business. But in the case of the annual value of premises owned by an assessee no sum will normally be "paid," and the Act seems to be inconsistent with itself. If the amount were paid it would *ipso facto* become income and thus subject to the provisions of the Act.

"It has further to be borne in mind that the annual value in such cases represents the return on a definite amount of capital and for present purposes the capital of a firm or company may be regarded as divided into two portions, the capital expended on the construction of buildings and the capital utilized in the purchase of machinery and plant, both portions earning their respective incomes. The interests of trade itself and also of the State as representing the general tax payer further demand that this view should be taken. To make an absolute grant of the annual value of business premises to an assessee is to give him a state subsidy which would operate very unfairly to other persons engaged in the same class of business, but carrying on their business in rented premises, and there is nothing to warrant that such a condition of affairs was contemplated by the Legislature.

"9. The questions for decision then are:—

(*a*) Is the allowance on account of the annual value of business premises owned and occupied by an assessee given under section 9(2) (*i*) of the Indian Income-Tax Act, 1918, liable to assessment or not?

(*b*) If the answer to the foregoing is in the affirmative, is section 8 or section 11 applicable?

"The first question is put on the request of the assessees, and in order to make a further reference to the High Court, if demanded, unnecessary, the Chief Revenue Authority asks the second.

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10. [Omitted, as merely drawing attention to the fact that certain figures given in paragraphs 2, 3 and 5 are of a confidential nature.]

The Reference coming up for hearing, the question arose as to whether the assessee or the Crown should be heard first. Upon this point the Court passed the following order:—

KNOX, PIGGOTT and GOKUL PRASAD, JJ.—With regard to the reference which has been made before us under section 51 of the Indian Income-Tax Act, No. VII of 1918, the assessee is the person entitled to be heard first and we so decide.

Mr. *T. A. Bradley*, for the petitioners assessees.

Mr. *W. Wallach*, for the Crown.

GOKUL PRASAD, J.—This is a reference under section 51 of the Indian Income-Tax Act, VII of 1918, by the Board of Revenue on the application of Messrs. A. John and Company, mill owners and merchants of Agra. In the course of the assessment proceedings the assessing officer held that the "annual value" of the business premises, that is, those actually occupied by the mill, while being deducted from the profits of the business, was to be assessed as income derived from house property.

The contention of the Company was that this sum, which had been deducted according to the provisions of section 9, sub-section 2, clause (i) of the Act, could not be re-assessed under section 8 as income derived from house property. The Company went up in appeal to the Income-Tax Commissioner. He came to the conclusion that the word "house property" used in the Act was of much wider significance than the word "dwelling house" used in another section of the Act and did include buildings like business premises, etc., and the annual value thereof was as such liable to assessment under section 5, clause (iii) of the Act. His reasons for arriving at this conclusion were, to use his own words:—"At first sight this deduction for dwelling house in the latter part of section 9 (2) (i) seems to support petitioner's case, but a vital objection to the argument is that the Act has also allowed depreciation on the value of building which in time will recoup the total cost of the buildings to the owner. It also allows fire insurance and repairs. It may wel

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be asked why should the State allow the annual value as a deduction and make a present of the allowance for depreciation and repairs? Obviously, there is a fallacy in the petitioners' argument, and the conclusion is that, just as the owner of the premises will be taxed when rent is deducted, so the owner will be taxed when the factory belongs to him.

"Stated in another way, the Act taxes all income unless it is specially exempted. The annual value of the factory represents income of the portion of capital locked up in factory premises which produces just as much as the machinery does."

And he further went on to say:

"Even if section 8 of the Act did not apply, the amount would be liable to assessment under section 11 of the Act as income derived from other sources."

The Board of Revenue, however, was of opinion that it was a matter of considerable doubt whether mill premises could be treated as house property for the purposes of section 8. It goes on to say in its reference: [The first three paragraphs of Clause 6 of the Statement of Reference (*Vide Supra*) by the Board of Revenue are here quoted].

The questions referred to us by the Board for decision are:—

(1) Is the allowance on account of the annual value of business premises owned and occupied by an assessee given under section 9 (2) (*i*) of the Indian Income-Tax Act, 1918, liable to assessment or not?

(2) If the answer to the foregoing is in the affirmative, is section 8 or section 11 applicable?

In arriving at a decision on these questions it is important to bear two things in mind: (1) that a Fiscal Act has to be construed strictly, and (2), that we are here to carry out the provisions of the law and not to legislate or to consider what the law ought to have been.

As regards the applicability of section 8 of the Income-Tax Act I have nothing to add to the reasons given by the Board of Revenue in its referring order that it does not apply to a case like the present. The only other section which could be said to be applicable is the omnibus section 11 of the Income-Tax

Act, but the difficulty in applying section 11 of the Act is that where the law has made specific provision regarding a particular matter it cannot be ignored. The omnibus rule comes into play only where the Legislature omits to make a provision for a particular contingency. It is, therefore, quite evident that both the general and the particular provisions cannot be applied together. They are mutually exclusive, and a general provision of the law cannot be applied on the ground that if the particular provision relating thereto is made applicable it would lead to anomalous results. During the course of a long argument advanced to us on behalf of the Company a number of side issues were discussed which I deem unnecessary to consider in detail as they would tend to obscure the real issue. The point for consideration, put shortly, is whether the statutory deduction of the annual value of the business premises from the income of the business allowed by section 9 (2) (*i*) is liable to taxation under any other provision of the Act, or in other words, can an amount expressly excluded from being taken into consideration in calculating the income derived from business for the purposes of the Income-Tax Act be included for such purposes under any other section? It is certainly an anomaly that a person carrying on a mill business in a rented house should be in a more unfavourable position than one who carries on the same business in his own house, and that in the case of a rented house the Government will be able to recover income-tax on the annual value of the premises, but not so in the case of a person who owns both the mill and the premises. Supposing the profits after paying the working expenses of the mill, excluding the rent thereof, came to Rs. 20,000, the tenant would have to pay income-tax on Rs. 20,000 minus Rs. 5,000, the supposed amount of the annual rent, and the Government will realize its income-tax on the Rs. 5,000, that is, the rent, from the owner; but if the owner himself owned both the business and the premises the Government would be getting income-tax on Rs. 20,000 minus Rs. 5,000, the annual value deducted under section 9 aforesaid, that is, Rs. 15,000 only. This is a result which was possibly not contemplated by the framers of the Act, but, as I have already stated above, we are here to interpret the law and not to act as Legislators. I am

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distinctly of opinion that, having regard to the express provisions of section 9, which refers to income from business, we should not be justified in holding that the amount in dispute is chargeable, as income from other sources, under section 11 of the Income-Tax Act. This provision has been newly added in the present Act and is apparently based on the provisions of the English Income-Tax Act. Under that Act the owner is liable to pay income-tax on such an amount under certain other provisions of the same Act, and it is quite possible that, whilst incorporating the former provision from the English Income-Tax Act, the framers of the Indian Income-Tax Act inadvertently omitted to provide for the levying of income-tax on this amount. However, this is after all mere speculation, and, as I have said above, the amount in dispute is not liable to income-tax under either of the two sections 8 and 11 of the Income-Tax Act. I would, therefore, answer the first question in the negative.

It is unnecessary to record a separate finding on the second question as it has already been discussed in connection with the first question.

PIGGOTT, J.:—I agree that the assessee is not liable to pay any tax on what I may call the "nominal income," in respect of which this reference has been made, under the head of "income derived from other sources," by virtue of the provisions of section 11 of the Income-Tax Act No. VII of 1918. The sum of money in question has been arrived at by the Income-Tax Commissioner working upon the definition of the expression "annual value" given in section 8 of the same Act. That definition is expressly limited to the purposes of section 8 and section 9 of the Act. There is no warrant for applying that definition to the provisions of section 11 of the Act, or making use of it so as to create a so-called item of income which the assessee is supposed to have enjoyed by taking money out of one of his pockets and putting it into another. If, however, it had been necessary for me to decide this reference alone, I should not have felt it possible to return precisely the answer which has found favour with the majority of this Bench. Seeing that my difference of opinion can have no practical effect on the answer to be returned, I propose merely to indicate the opinion

which has commended itself on a consideration of the arguments which have been addressed to us.

Under the former Income-Tax Act, No. II of 1886, a firm of manufacturers carrying on business in buildings constructed by themselves found no provision in the law which authorized them to charge against the gross profits of their business any sum of money as representing, or forming an equivalent to, the rent which they would otherwise have had to pay to the owner of the premises. Consequently the net assessable profits of the business were greater than they would otherwise have been by a sum of money representing, in a sense, the rent which the manufacturing firm were saved from the necessity of paying by reason of the fact that they had built their own factory. In this sense it is true, as stated in the order of reference, that the extra profits enjoyed by a firm of manufacturers in virtue of their carrying on business in premises owned by themselves were assessed to income-tax as the income of a company under section 11 of Act No. II of 1886. In the Act No. VII of 1918, which we are now considering, we find two changes made. By reason of a special proviso inserted in section 9 (2) (*i*) of this Act, an assessee who is carrying on business in premises owned by himself is entitled to charge as part of the expenses of his business a sum equal to the annual value of those premises, the expression "annual value" being defined in the preceding section 8 of the Act. The other important change with which we are concerned is the enactment of the above-mentioned section 8, which lays down that the annual value of house property is liable to pay income-tax under the head of "income derived from house property," subject to certain conditions and deductions. One of these conditions is that an assessee occupying his own house property is only liable to pay the tax on five-sixths of the annual value. I agree generally with what KNOX, J., has said regarding the danger of founding our decision in a matter of this sort on the provisions of the English Statute, but that Statute has been pointedly brought to our notice in the order of reference, and I think it is legitimate to consider such of its provisions as seem to have a direct bearing on the question now before us. There can be no doubt that under the English Act the

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assessee whose case is now before us could have claimed a deduction equivalent to the full annual value of these premises from the assessing officer who was drawing up an estimate of the annual profits of the business. On the other hand the assessee, as owner of the premises, would have had to pay income-tax on five-sixths at least of the annual value. We were informed in argument that under the English Act further deductions could be claimed by the assessee, thus making the sum in respect of which he would be taxed even less as compared with the sum which he was entitled to charge against his gross profits as part of the expenses of his business. We have not gone into this matter in detail and it is not of much importance. The point I wish to make is that, if there is room for the supposition that the changes introduced into the Indian Income-Tax law by the passing of Act VII of 1918 were intended to bring the law in India into closer conformity with that in England, it does seem reasonable to take the changes effected by the passing of section 8 and by the insertion of the new provision in section 9 (2) (*i*) together, and thus to suggest the conclusion that the intention of the Legislature was to make a much slighter concession in favour of such an assessee than will result from the answer which we are returning to this reference as a whole. If these premises fall within the meaning of the expression "house property" used in section 8, the result would be to give the assessee a deduction to the full amount of the annual value under section 9, but to assess him to income-tax as a house proprietor in respect of five-sixths of the said annual value. A number of reasons against adopting this view have been set forth in the order of reference and I cannot deny that they are entitled to considerable weight. To my mind however, the issue always comes back to the plain question whether these factories or mills are or are not "house property" within the meaning of that nowhere defined expression as used in section 8 of the Indian Income Tax Act. The suggestion that the word "house" always implies a building used for human habitation, or as the dwelling place of human beings, derives considerable support from a standard work such as the Oxford Dictionary of the English language. There seems to me, however, much force in the

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argument pressed by the Income-Tax Commissioner in connection with this very matter, to the effect that the expression "house property" is in itself a wider one and is used in section 8 as meaning something more than the word "dwelling house" in section 9 of the Act. Indeed a good many of the reasons advanced in favour of limiting the expression "house property" in section 8 of the Act to dwelling or residential houses seem to me to be met by the consideration that the business premises referred to in section 9 may quite conceivably include buildings, such for instance as indigo vats or brick-kilns, which are certainly not "house property" in any sense of the term. It has to be noted, moreover that the word "house," when used in certain combinations, such for instance as "ware-house," "coffee-house," "play-house," undoubtedly includes buildings not used for human habitation. The difficulty which I have felt throughout is that, if a firm in the position of this assessee had been called upon for a return of its "house property" in or about the city of Agra, I think it would have been expected to include warehouses or factories as falling within the meaning of that expression. I should have been disposed for these reasons to answer the reference by saying that the annual value of these premises, to the extent indicated, is assessable to income-tax under the provisions of section 8 of the Act. This difference of opinion on my part does not affect the answer which will be returned to the reference, and I admit the question to be one of considerable difficulty. If our decision has consequences not contemplated by the Legislature when Act No. VII of 1918 was passed, there can be no doubt that the responsibility must be laid to the account of the defective drafting of sections 8 and 9 and the failure to supply any definition of so crucial an expression as "house property."

KNOX, J.—At the request of Messrs. A. John and Co., Managing Agents of the Agra Spinning and Weaving Agency, Ld., a reference has been made to this Court under section 51(1) of the Indian Income-Tax Act, 1918.

The firm was assessed by the Collector of Agra as having an income liable to payment of tax of Rs. 4,00,930.

Among the items liable to payment of tax was one set out as House Property Rs. 59,548. The question for consideration is

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whether this item is liable to such payment. This figure is thus arrived at :—

		Rs.
Business premises	..	59,537 (i. e. 6 per cent. on cost of mill premises, Rs. 9,92,293).
House property	..	11,909
Balance	..	59,548

Messrs. John and Co. objected to the inclusion of the annual value of the business premises, as section 9 (2) (*i*) of the Income-Tax Act allowed a deduction of this sum to be made from the profits of the business. The Collector of Agra held that this sum, while deducted from the profits of the business under section 9 (2) (*i*) must be treated as income under another head, *i.e.*, as house property.

The Income-Tax Commissioner not only agreed with the Collector but went still further and held that even if the items were not liable to assessment under section 8, they would be liable under section 11 of the Act.

The Chief Revenue Authority admits the existence of a doubt whether mill premises can be treated as "house property" under section 8 and has given at considerable length its reasons for holding this view.

Finally it formulates the questions for decision by this Court as—

(1) Is the allowance on account of the annual value of business premises owned and occupied by an assessee given under section 9 (2) (*i*) of the Indian Income-Tax Act, 1918, liable to assessment or not ?

(2) If an answer to the foregoing is in the affirmative, is section 8 or section 11 applicable ?

The learned counsel for Messrs. John and Co. contended that the allowance is not liable to assessment. He supported his argument by drawing analogy from the English Statute under which income-tax is assessed (8 and 9 Geo. 5, Ch. 40) and upon which the fair presumption, he added, might be founded that the Indian Income-Tax Act, VII of 1918, was based, especially where it introduced differences from the Act previously in force. But, after having given full consideration to his arguments, I hold

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that such comparison and analogy is not firm ground for interpreting Act No. VII of 1918.

(1) The Statute 8 and 9 Geo. 5, Ch. 40, consists of 239 sections to which several schedules are appended. I do not pretend to be familiar with its provisions or to have had the leisure to study it carefully.

(2) In important subject matters, notably, the nature of property in England differs from the nature of property in India. For these and other reasons, and bearing in mind that we are dealing with an Act imposing a pecuniary burden upon the subject, I think it fair to fall back upon the Indian Income-Tax Act, 1918, itself.

While section 9 (2) (*i*) enacts that in computing profits allowance on account of the *bonâ fide* annual value of premises a special allowance shall, under certain circumstances, be made. It nowhere suggests that such allowance while remitted to a subject shall be burdened with a pecuniary obligation. Such procedure would in itself be strange, and if such a burden be contemplated we should expect to find clear and precise words imposing it. In this connection see *Carr* v. *Fowle* (1). A construction which would have the effect of making a person liable to pay the same tax twice in respect of the same subject matter would not be adopted unless the words were very clear. We have not been referred to such words. A suggestion was made that section 11 might contemplate the imposition of such a burden. But the language of the section clearly points in an opposite direction. There is no doubt as to the plain meaning of the words "if not included under any of the preceding heads."

There remains section 8, and the suggestion is that this allowance under consideration may and should be classed as "Income derived from house property." House property is nowhere defined in this Act. The premises are used solely for business purposes and not for occupation as dwellings, and I agree with the Chief Revenue Authority that they cannot be treated as house property.

I would, therefore, reply that under the Act as it stands the allowance on account of the annual value of business premises

(1) (1893) 1 Q.B., 251.

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owned and occupied by the assessee is not liable to assessment at all.

BY THE COURT.—Our answer then to the reference is that as Act No. VII of 1918 now stands the allowance on account of the annual value of business premises owned and occupied by the assessee is not liable to assessment at all. We grant the assessee's counsel Rs. 220 as costs in this and the connected reference the result of which is governed by this decision.

Reference answered.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Gokul Prasad.

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MUHAMMAD HAFIZ AND ANOTHER (DECREE-HOLDERS) *v.* MUHAMMAD IBRAHIM (JUDGMENT-DEBTOR).*

Act No. IX of 1908 (Indian Limitation Act), schedule I, article 182, clause 5—Execution of decree—Application to take a step in aid of execution—Application to execute decree against surety available in respect of a subsequent application to execute against judgment-debtor.

An application asking the proper court to execute the entire decree by the arrest of the person of a surety who has made himself liable for the satisfaction of the decree, amounts to asking the execution court to take a step in aid of the execution of the decree as against the principal whose liability the surety has taken upon himself within the meaning of clause (5) of article 182 of the first schedule to the Indian Limitation Act, 1908.

THE facts of the case briefly are these:—Muhammad Hafiz and others obtained a joint decree against Muhammad Ibrahim, Akbar and Shakur on the 2nd of January, 1913, which was confirmed in appeal on the 11th of June, 1913. On second appeal the High Court also affirmed it on the 30th of May, 1914. On the 10th of April, 1913 the decree-holders applied for execution against Muhammad Ibrahim alone. On the 23rd of January, 1914, a warrant of arrest was issued against Muhammad Ibrahim, but Muhammad Husain and Badruddin stood surety for him. They bound themselves to produce him before the court and undertook to pay the sum of money due by him should the decree-holder fail to realize it from him. After various intermediate proceedings, an application was made on the 19th of

* Second Appeal No. 1433 of 1919, from a decree of Gopal Das Mukerji, officiating District Judge of Agra, dated the 10th of July, 1919, reversing a decree of Kanheshwar Nath Rai, Subordinate Judge of Agra, dated the 24th of February, 1919.