"decree" shows that an appeal lies in the present case. But although an appeal lies, we are of opinion that the decision of the lower Court is correct. The appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

KHEMNA GOWALA (DEFENDANT) *v.* BUDOLOO KHAN (PLAINTIFF).* 1880 *July* 8.

Arbitration—Civil Procedure Code (Act X of 1877), Chap. xxxvii—Kabuliat, Suit for—Suit under Act X of 1859.

Notwithstanding that chap. xxxvii of Act X of 1877 (in reference to arbitration) does not refer specially to suits brought under Act X of 1859, yet if both parties to a suit for a kabuliat brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them, and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators, on the ground that the reference to arbitration was irregular, and not warranted by any of the provisions of Act X of 1877.

When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court out of which the reference issued is not at liberty on that ground to dismiss the suit, but is bound to order the defendant (with the alternative of eviction) to execute a kabuliat in favour of the plaintiff, engaging himself to pay rent to the plaintiff at the rate determined by the arbitrators to be fair and equitable.

THE plaintiff in this case, Budoloo Khan, sued the defendant, Khemna Gowala, who was his tenant, in the Court of the Deputy Collector of Chatra, to obtain a kabuliat at an enhanced rate of rent for the land held under him. It appeared that the defendant had been previously paying rent at the rate of Rs. 8 per annum. The rent demanded by the plaintiff in his plaint was

* Appeal from Appellate Decree, No. 2055 of 1879, against the decree of R. Towers, Esq., Officiating Judicial Commissioner of Chota Nagpore, dated the 13th June 1879, reversing the decree of Baboo Hurihur Churn Lall, Deputy Collector of Chatra, dated the 8th November 1878.

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Rs. 21-15. When the case came on to be heard before the Deputy Collector, both parties agreed to refer all matters in dispute between them to certain arbitrators named by them, and filed a joint petition, praying that the case might be referred to such arbitrators. The Deputy Collector made the order prayed for.

The arbitrators came to the conclusion that Rs. 15 per annum was the fair and equitable rent payable by the defendant to the plaintiff, and their award was, that the defendant should execute a kabuliat in favor of the plaintiff, engaging himself to pay rent in future at that rate.

On the award being returned to the Deputy Collector, the defendant objected, first, that there was no provision in Act X of 1877, empowering a Civil Court to refer to arbitration a suit of this description,—namely, a suit brought under Act X of 1859; and secondly, that the arbitrators having found the fair and equitable rent for the land held by the defendant under the plaintiff to be Rs. 15 per annum, and not Rs. 21-15, as claimed by the plaintiff in his plaint, the Court was not at liberty to order the defendant to give a kabuliat at the rent allowed by the arbitrators, but was bound to dismiss the suit of the plaintiff with costs. In support of this contention the case of *Gogon Manji* v. *Kashishwary Debi* (1) was relied upon. The Deputy Collector dismissed the suit with costs upon both grounds.

Upon appeal to the Officiating Judicial Commissioner of Chota Nagpore, the decision of the Deputy Commissioner was reversed with costs, and a decree passed, ordering the defendant to execute a kabuliat as directed by the award of the arbitrators. Against this decree the defendant appealed to the High Court.

Baboo *Jogendra Chunder Dey* for the appellant.

Mr. *Sandel* for the respondent.

Baboo *Jogendra Chunder Dey*.—The judgment of the lower Court of Appeal is wrong, because the Code of Civil Procedure, in chap. xxxvii, contains no provisions empowering any Civil Court to refer to arbitration any case instituted under Act X of 1859, and the reason for this is obvious. These cases are of a

(1) I. L. R., 3 Calc., 498.

special character, they are suits between opulent or comparatively opulent landlords, who are able to command the assistance of the best professional skill and experience on the one hand, and needy ignorant and defenceless ryots, usually without the means of securing similar assistance, on the other. It is true that, in other suits, the rich and the poor appear frequently as antagonistic parties; but while in all other suits this is an accident, in this particular class of suits it is an almost invariable rule. It would not, therefore, be rash to assume that, while the Legislature intended to permit ordinary cases to be referred, with the consent of parties, to the determination of non-professional arbitrators, it deliberately omitted to extend that permission to the large and important class of cases in which the knowledge, experience, and humanity of its own officers might be the only shield between the weak and the strong, the oppressor and the oppressed. As to the other point,—namely, whether upon its appearing from the award of the arbitrators that the rate of rent demanded by the plaintiff in his plaint was exorbitant and excessive, and not what they found to be the fair and equitable rental, the Court of first instance was not right in dismissing the plaintiff's suit, I submit that this has been decided by authority—see *Gogon Manji* v. *Kashishwary Debi* (1) and *Gholam Mohamed* v. *Asmut Ali Khan* (2). It is true that in all other suits in the mofussil, if a plaintiff has claimed a larger sum than is ultimately found to be really due to him, a decree is passed in his favor for such sum, and he also gets his costs for the amount decreed to him; but that is because ordinary cases differ, as I have already observed, from the class of suits which includes the case now before the Court; and also because it is provided by s. 13 of Act X of 1859, that "no ryot who holds land without a written engagement shall be liable to pay any higher rent for such land than the rent payable for the previous years, unless a written notice has been served on such ryot in or before the month of Choit, specifying the rent to which he will be subject for the ensuing year." In the present case no notice was served on the defendant informing him that he would be required to pay

(1) I. L. R., 3 Calc., 498.

(2) B. L. R., Sup. Vol., 974; S. C., 10 W. R., F. B., 14.

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at the rate of Rs. 15 for the ensuing year. If any notice was in fact served upon him, it was a notice that he would be required to pay at the rate of Rs. 21-15. Had the claim made upon him been for Rs. 15 only, perhaps he would not have resisted it. Again s. 9 of the same Act provides that "the tender to any ryot of a pottah, *such as the ryot is entitled to receive*, shall be held to entitle the person to whom the rent is payable to receive a kabuliat from such ryot." The tender of *such a pottah as the ryot is entitled to receive*, which in the present would be a pottah stating the rent reserved to be Rs. 15 per annum, appears, therefore, to be a condition precedent to the right to demand a kabuliat; but no such tender was made before the institution of this suit.

Mr. *Sandel* for the respondent. — By the general law of the land, all parties to disputes are entitled to refer any matters in dispute between them to arbitration; and there is nothing either in Act X of 1877 or in any other Act of the Legislature which makes the fact, that a suit under Act X of 1859 is pending between them sufficient to deprive them of this right. As to the second point, if the submission to arbitration be ruled to have been a good submission, as it is submitted it is, then it follows, that both parties voluntarily agreed that the arbitrators should decide *all* matters in dispute between them in that suit. The matters in dispute were not merely what was the proper rent to be assessed on the land, the rent of which the plaintiff claimed to enhance, but every other matter of defence which the defendant might urge; and the last, but not the least in importance, was, whether the plaintiff was entitled to receive from the defendant a kabuliat for rent at the rate which they should come to the conclusion was a fair rate, or whether his suit should be dismissed. The award therefore ought to be upheld.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—The plaintiff, who is the respondent in this Court, brought this suit for a kabuliat against the defendant, appellant, in the Court of the Deputy Collector of Chatra, in the Manbhum District, on 3rd June 1878, and on 7th August following, both plaintiff and defendant filed a joint petition before

the Deputy Collector, stating that they had agreed to refer the matters in dispute to certain arbitrators.

These arbitrators, accordingly, delivered their award on 8th November, and it was sent in to the Deputy Collector. He, however, rejected it, as he considered that it was at variance with the decision in the case of *Gogon Manji* v. *Kashishwary Debi* (1), as it awarded a lower rate of rent than was claimed in the plaint. He, therefore, dismissed the suit. The lower Appellate Court, however, after discussing the legality of a reference to arbitration in a suit under Act X of 1859 (as to which he decided that such a reference could be legally made), and, finding that there were no valid objections to the proceedings of the arbitrators, reversed the decree of the Deputy Collector, and passed a decree in terms of the award.

In this Court it is contended that the reference to arbitration was null and void, as the chapter of the Civil Procedure Code relating to reference to arbitration is not applicable to suits under Act X of 1859.

It is quite true that that part of the Civil Procedure Code does not apply, and the lower Appellate Court was in error in relying upon two cases reported in the N. W. P. Reports as authorities. We have referred to those cases, and find that they are based upon an Act (No. XIV of 1863), which was only applicable to the N. W. P.

But we think that, on other grounds, we can uphold the decision of the lower Appellate Court. Irrespective of any Code of Procedure, persons are at liberty to refer any matter in dispute to arbitration, and any award made under such circumstance may be enforced by a suit brought for that purpose. It has also been held by this Court that parties, who have a suit pending in Court, may submit the subject-matter of that suit to arbitration, see *Thakoor Doss Roy* v. *Hurry Doss Roy* (2); and the same law has been laid down in Bombay, see *Harivalabdas Kalliandas* v. *Utamchand Manekchand* (3). We see no reason why this principle should not be applied to a suit in Court under Act X of 1859. At any rate, if there was any

(1) I. L. R., 3 Calc., 498. (2) W. R., 1864, Mis. Rul., 21.
(3) I. L. R., 4 Bom., 1.

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irregularity in the reference to arbitration at the request of both the parties, we think, on the authority of *Puna Bibee* v. *Khoda Buksh* (1) it is one which the respondent cannot be allowed to object to in appeal.

No valid grounds for setting aside the award of the arbitrators have been shown to us. We, therefore, affirm the decree of the lower Appellate Court, and dismiss this appeal with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, Mr. Justice Morris, Mr. Justice Mitter, and Mr. Justice Tottenham.

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June 21.

UMA SUNKER MOITRO (PLAINTIFF) *v.* KALI KOMUL MOZUMDAR AND OTHERS (DEFENDANTS).*

Hindu Law—Inheritance—Adoption—Succession of adopted Son to Relatives of adoptive Mother.

According to Hindu law, an adopted son takes by inheritance from the relatives of his adoptive mother in the same way as a legitimate son.

Morun Moee Debeah v. *Bejoy Krishto Gossamee* (2) and *Chinnarama Kristna Ayyar* v. *Minatchi Ammal* (3) overruled.

THIS was a suit brought to recover possession of certain property, which, the plaintiff contended, devolved on him as the adopted son of one Hurosoondoree Debee, the property having previously belonged to her father, and after his death to her brother. The defendants denied the authority to adopt, and contended that an adopted son could not succeed to the property of his adoptive mother's father and brother.

The Subordinate Judge found the adoption to be valid

* Reference to Full Bench made by Mr. Justice Morris and Mr. Justice Prinsep, dated the 1st April 1880, in appeal from Appellate Decree, No. 1248 of 1878, against the decree of J. R. Hallett, Esq., Officiating Additional Judge of Rajshahye, dated the 31st May 1878, affirming the decree of Baboo Nundo Coomar Bose Roy Bahadur, Second Subordinate Judge of that district, dated the 20th December 1877.

(1) 22 W. R., 396. (2) W. R., Sp. No., 121.

(3) 7 Mad. H. C. R., 245.