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was not in writing, is admissible. I think it is. It was a contract which did not detract from, add to, or vary the original contract. It was only providing for the means by which the instalments were to be paid. The appellant got possession in accordance with the oral agreement. The appeal is dismissed with costs.

TYRRELL, J., concurred.

Appeal dismissed.

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 February 8.

*Before Sir John Edg, Kt., Chief Justice, Mr. Justice Oulfield, and
 Mr. Justice Prodhurst.*

GOBIND RAM (DEFENDANT) v. NARAIN DAS (PLAINTIFF)*.

Landholder and tenant—Suit for rent where the right to receive it is disputed—Third person who has received rent made party—Jurisdiction of Rent Court to pass decree for rent against such party—Question of title—Act XII of 1881 (N.-W. P. Rent Act) s. 148.

In a suit by a landholder for recovery of rent in which a third person alleged to have received such rent is made a party under s. 148 of the N.-W. P. Rent Act (XII of 1881), the question of title to receive the rent cannot be determined between the plaintiff and such person, but can only be litigated and determined in a subsequent suit in the Civil Court. The only question between the plaintiff and the person so made a party which can be determined in the Rent Court under s. 148 is the actual receipt and enjoyment of the rent.

A party who is brought in under s. 148 of the Rent Act cannot be made subject to the decree for rent so as to allow execution to be taken out against him, whether his *bonâ fide* receipt and enjoyment of the rent is proved or not. The only person against whom such a decree can be passed is the tenant. *Mudho Prasad v. Ambar* (1) referred to.

Per EDGE, C. J., *semble*, that the intention of the Legislature in allowing a third person who claims under s. 148 of the Rent Act to be made a party to the suit may possibly have been that, by bringing him in, he may be bound by a declaration in the suit that he had in fact received the rent, so as to prevent him in the civil suit from denying the fact that he had received it.

In a suit by a landholder for recovery of rent, the defendants pleaded that they had paid the rent to a co-sharer of the plaintiff. The co-sharer made a deposition in which he alleged that he was entitled to the rent, not only as a co-sharer, but also as the appointed agent of the plaintiff. The Court thereupon made him a party to the suit under s. 148 of the Rent Act, and passed a joint decree against him and the tenant for rent.

Held that the Court was justified in making him a party under s. 148 of the Rent Act, but was not competent to pass a decree for rent against him.

* Second Appeal No. 504 of 1886 from a decree of C. W. P. Watts Esq., District Judge of Moradabad, dated the 25th November, 1885, reversing a decree of Maulvi Muhammad Usman, Assistant Collector of Moradabad, dated the 19th March, 1885.

The facts of this case are stated in the judgment of Edge, C. J.

Munshi *Hanuman Prasad*, for the appellants.

Pandit *Bishambhar Nath*, for the respondents.

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EDGE, C. J.—In this case one Narain Das sued two tenants for rent which was in arrear. They pleaded that they had paid the rent to Gobind Ram, one of the shareholders of the village. Gobind Ram did allege in his deposition, before he was made a party to the suit, that he had received this rent, and alleged that he was entitled to receive the rent, not only as a shareholder, but also as the appointed agent of Narain Das. On that the Judge in the Rent Court made Gobind Ram a party to the suit, professing to act under s. 148 of the Rent Act. It appears to me that he was justified in making Gobind Ram a party to the suit under that section, because obviously the defence of the tenants and the deposition of Gobind Ram was that Gobind Ram was a shareholder in the village, and did receive the rent, of which, as a shareholder, he was entitled to enjoy some portion. As a matter of fact, the defence of the tenants and the statement of Gobind Ram must have led to the inference that the transaction between Gobind Ram and the tenants was a *bonâ fide* one. After Gobind Ram was made a party to the suit in the Rent Court, the case was heard by the Judge in the Rent Court, and he came to the conclusion that the rent in question had been paid to Gobind Ram, as had been alleged by him and the tenants, and on that he dismissed the suit. From that dismissal of the suit in the Rent Court the plaintiff, who was found to be the *lambardar*, brought his appeal to the District Judge. It is not clear from the judgment of the District Judge whether he, in fact, found that the rent had been paid to Gobind Ram, and whether Gobind Ram did receive and enjoy the rent, within the meaning of s. 148 of the Rent Act. However, what he did was to pass a joint decree against Gobind Ram and the tenants for the amount of this rent.

Against that decree the tenants have not appealed, and therefore we need not concern ourselves with the question whether or not the decree was justified as against them. Gobind Ram has, however, appealed, and one of his grounds of appeal is that there was no power in the Court below to join him as a third party to

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The suit, and no jurisdiction in the Court to pass a decree against him. The decree which is in appeal before us is one on which, if there was jurisdiction to pass it, execution might issue, and therefore we have to see whether either the Rent Court or the Court in appeal could pass against a person added under s. 148 a decree upon which execution might issue. That depends upon the construction to be put upon s. 148 of the Rent Act. I take it as undoubted law that before a decree for rent upon which execution can issue can be passed, the right of the person obtaining the decree to receive such rent must be established, because if he did not establish his right, or his right were not admitted, he would have no more right to receive the rent than a stranger. Therefore, in this case, in order to support the decree, we must see whether the lower appellate Judge had power to determine a question of title to receive the rent as against the third party. I think it is plainly provided in s. 148 of the Rent Act that that is a question which cannot be decided in what may be called a rent suit, *i. e.*, a suit in which rent is claimed in the Rent Court. It is a question of title which, by the proviso of that section, must be litigated and determined in a subsequent suit in a Civil Court. On that ground I am of opinion that, in this particular case, whether Gobind Ram was rightly or wrongly made a party in the rent proceedings, there was no power in the lower appellate Court to pass a decree against him in respect of the rent upon which execution could issue. I think I am supported in that view by the decision of my brothers Straight and Brodhurst in the case of *Madho Prasad v. Ambar* (1). In that suit it was held that even where a third person had actually and in good faith received the rent sued for, the claim should not have been decreed against him but should have been dismissed. I think that is an authority for the view of s. 148 which I have expressed.

There is only one word more to be added. In saying this, I do not wish to express any decided judicial opinion on the point. We have only to deal with the decree before us, which, I think, was in excess of the jurisdiction of the Court which passed it. The question may arise as to the object of making a third person, who claims under s. 148 of the Rent Act, a party to the suit. It may

(1) I. L. R., 5 All. 503.

possibly have been the intention of the Legislature that, by bringing him in, he may be bound by a declaration in the suit that he had, in fact, received the rent, so as to prevent him in the civil suit from denying the fact that he had actually received the rent. That may be the object of making him a party to the suit.

Under these circumstances this appeal should be allowed, but inasmuch as the line of defence taken by Gobind Ram was one likely to lead to confusion in the minds of the Judges below, and has given us a great deal of difficulty in understanding what was the position he took up, his appeal will be allowed without costs.

OLDFIELD, J.—I concur. I have only to add a few words. On looking to the pleadings of the tenants and Gobind Ram in this suit, I think a question did arise under s. 148 of the Rent Act, and, that being so, it was the duty of the Judge to decide, in the first instance, whether Gobind Ram had been actually and in good faith receiving and enjoying the rent before and up to the time when the right to sue accrued. Had he decided in the affirmative, the plaintiff's claim would necessarily have been dismissed, and of course no decree would be passed against Gobind Ram, and in that case his appeal would be entitled to succeed. If, on the other hand, that question had been decided in favour of the plaintiff, then the decree would be made against the tenants for the rent, but not against Gobind Ram. S. 148 of the Rent Act provides that "the question of such receipt and enjoyment of the rent by such third person may be inquired into, and *the suit shall be decided according to the result of such inquiry.*" I think this means that in that case the decree the plaintiff would be entitled to would be a decree against the tenants for the rent thus claimed. I do not think it was contemplated that a party who was brought in under s. 148 of the Rent Act should be made subject to the decree for rent, so as to allow execution to be taken out against him. The only question between him and the plaintiff contemplated for trial is the receipt and enjoyment of the rent, and the last portion of s. 148 provides that "the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision." That seems to me to show that, as between the plaintiff and Gobind Ram, the question was left open to be decided

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by a subsequent suit in the Civil Court, and a Revenue Court could not pass a decree for rent against the intervenor, who does not occupy the position of a tenant. With these remarks, I concur in the decision of the learned Chief Justice.

BRODHURST, J.—The lower appellate Court obviously should not have decreed the claim both against Gobind Ram—a co-sharer, made a defendant under s. 148 of the Rent Act—and the tenants. With reference to the ruling of a Bench of this Court in *Madho Prasad v. Ambar* (1), the lower appellate Court should, under no circumstances, have decreed the claim against Gobind Ram, a defendant under s. 148, and on its finding that the rent had not been paid to any one but was still due to the plaintiff lambardar, it should have passed a decree against the tenants, and against them alone.

Gobind Ram only has appealed. As the lower appellate Court's decree against him is wrong, I concur in allowing his appeal, and in modifying the decree of the lower appellate Court to that extent, and in ordering that each party pay his own costs.

Appeal allowed.

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 February 10.

CIVIL REVISIONAL.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Brodhurst.

SHIELDS (DEFENDANT) v. WILKINSON (PLAINTIFF)*

Bailment—Hiring—Accident—Negligence—Evidence—Burden of proof—Act I of 1872 (Evidence Act), s. 106—Act IX of 1872 (Contract Act), ss. 150, 151, 152, —High Court's powers of revision—Civil Procedure Code, s. 622.

A Judge has no jurisdiction to pass, in a contested suit, a decree adverse to the defendant where there is no evidence or admission before him to support the decree, and where the burden of proof is not or has not continued to be upon the defendant. If he passes such a decree, it is liable to be set aside in revision under s. 622 of the Civil Procedure Code. *Maulvi Muhammad v. Syed Husain* (2) and *Sarnam Tewari v. Sahina Bibi* (3) referred to.

The question of the burden of proof in cases of accidental injury to goods bailed depends upon the particular circumstances of each case. In some cases,

* Application No 242 of 1886 for revision of a decree of Babu Promoda Charan Banerji, Judge of the Court of Small Causes, Allahabad, dated the 16th September, 1886.

(1) I. L. R., 5 All. 508.

(2) I. L. R., 3 All. 203. (3) I. L. R., 3 All. 417.