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The two remaining grounds impugn an order of the lower appellate Court, which, under the provisions of section 558 of the Code of Civil Procedure, restored the appeal, which it had dismissed for default under section 556. The law allows an appeal from an order refusing to grant an application under section 558 for the restoration of an appeal. But it does not provide for an appeal from an order granting such an application. The learned vakil relies upon section 591 of the Code of Civil Procedure. That section provides that, if a decree be appealed against, any error, defect or irregularity in an order not otherwise appealable affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. We are of opinion that the meaning of the words in section 591 "affecting the decision of the case" is that it must be shown that the error, defect or irregularity has affected the decision of the case on the merits. In this view an order such as that complained against in this case is not an order contemplated by section 591. In so holding, we are borne out by the decision in the case of *Chintamony Dassi v. Raghonath Sahoo* (1), with which we are in entire accord. For these reasons we dismiss this appeal with costs.

*Appeal dismissed.*

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*Before Mr. Justice Banerji and Mr. Justice Aikman.*

MADAN MOHAN LAL (PLAINTIFF) v. DILDAR HUSAIN (DEFENDANT).\*  
*Act No. XII of 1881 (N.-W. P. Rent Act), section 23—Suspension of revenue and consequent suspension of rent—Lessee entitled to the benefit of suspension of rent.*

*Held* that when the Local Government, under section 23 of the N.-W. P. Rent Act, suspends payment of revenue, and when suspension of rent has in consequence been ordered, a lessee is entitled to the benefit of the latter suspension.

THIS appeal arose out of a suit for arrears of rent under clause (a) of section 93 of the North-Western Provinces Rent Act. The suit was based upon a lease granted by the plaintiff

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\* Second Appeal No. 59 of 1900, from a decree of Khan Bahadur Mir Akbar Husain, District Judge of Allahabad, dated the 3rd of October 1899, confirming a decree of Babu Badri Nath, Assistant Collector, Allahabad, dated the 2nd of September 1899.

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to the defendant of a share in a certain village for three years, *viz.*, 1302 to 1304 Fasli. Various pleas were urged by the defendant, but more particularly a plea that he was entitled to have set off against the plaintiff's claim for rent certain sums remitted to the tenants in consequence of the action of the Local Government under section 23 of the N.-W. P. Rent Act. The Court of first instance (Assistant Collector) allowed this plea, and found as a matter of account that nothing was due to the plaintiff by the defendant. The lower appellate Court (District Judge of Allahabad) also took the same view and dismissed the appeal. The plaintiff thereupon appealed to the High Court.

Pandit *Sundar Lal*, for the appellant.

Mr. *E. A. Howard*, for the respondent.

AIKMAN, J. (BANERJI, J., concurring).—This appeal arises out of a suit brought by the plaintiff, who is appellant here, to recover from his lessee arrears of rent for the years 1303 and 1304 Fasli. The short question raised in this appeal is whether, when the Local Government, under section 23 of the Rent Act, suspends payment of revenue, and when suspension of rent has in consequence been ordered, a lessee is entitled to the benefit of the latter suspension. If he is, this appeal must fail. We are clearly of opinion that under the terms of section 23 the defendant lessee was entitled to suspension of payment of the money payable by him under his lease. The result is, that the finding of the learned District Judge, that at the date of the suit nothing was due from the defendant as to the first two instalments of rent, and that the suit as regards the remaining instalments of rent was premature, is correct. We dismiss the appeal with costs.

*Appeal dismissed.*