without impeaching and setting aside that decree, the Court would not be justified in holding that no order could be passed under section 90. For these reasons we allow the appeal, set aside the order of the lower appellate Court, and restore the order of the Subordinate Judge. The objector respondent must pay the costs of the objection in all Courts.

Appeal decreed.

FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Knox and Mr. Justice Banerji.

RAM LAL (DEFENDANT) *v.* MUNAWAR SHAH (PLAINTIFF).*

Act No. XII of 1881 *(N.-W. P. Rent Act), section* 148*—Land-holder and tenant—Suit for rent—Plea of payment to third person—Suit by such third person for declaration of title and for possession—Limitation.*

Held that the proviso to section 148 of the North-Western Provinces Rent Act, 1881, refers only to a suit to recover the rent in respect of which the suit mentioned in the first paragraph of the section has been brought, which rent has actually been paid to a third person. The proviso was not intended to abridge the period of limitation for a suit on title to obtain possession or a declaration of possession of the land out of which the rent in dispute issues. *Dasrath Rai* v. *Bhirgu Rai* (1) overruled. *Muhammad Salim* v. *Abdul Rahim* (2), *Ganga Prasad* v. *Baldeo Ram* (3), *Kishen Coomar Shaha* v. *Jeebun Singh* (4), *Hurronath Ray* v. *Srishteedhur Doss* (5) and *Ishur Chunder Sen* v. *Beepin Behary Roy* (6) followed. *Bhagmanee Koonwer* v *Furzund Ali* (7) referred to by KNOX, J.

THE facts of this case are as follows:—

One Ram Lal brought a suit for the rent of a holding for the years 1302 and 1303 Fasli against the tenants of the holding. The tenants pleaded that they had paid the rent for the years in question *bond fide* to one Munawar Shah. An inquiry was held by a Revenue Court under the provisions of section 148 of the North-Western Provinces Rent Act, 1881, and that Court found that Ram Lal was entitled to the rent in question.

* Second Appeal No. 1105 of 1900, from a decree of Babu Nihal Chandar, Subordinate Judge of Shahjahanpur, dated the 9th of June, 1900, reversing the decree of Rai Bageshri Dial, Munsif of East Budaun, District Shahjahanpur, dated the 31st of August, 1899.

(1) (1901) I. L. R., 23 All., 434.
(2) Weekly Notes, 1885, p. 261.
(3) (1888) I. L. R., 10 All., 347.
(4) (1866) 5 W. R., Act X Rulings, 85.
(5) (1867) 7 W. R., 152.
(6) (1876) 25 W. R., C. R., 481.
(7) (1866) N.-W. P. H. C. Rep., 1866, R. C. A., 20.

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Ram Lal's suit for rent was decreed on the 15th of January, 1897. On the 13th of May, 1899, Munawar Shah brought the present suit against Ram Lal and certain *pro formâ* defendants, whom he alleged to be interested jointly with himself in the property in suit, in which he asked for a declaration of his title to the property and for possession. The main defence to this suit was that the plaintiff had not proved his possession of the property within twelve years from the date of the institution of the suit, and on this ground the Court of first instance (Munsif of East Budaun) dismissed the suit. The plaintiff appealed, and the lower appellate Court (Subordinate Judge of Shahjahanpur) decreed the claim. The defendant Ram Lal thereupon appealed to the High Court, where the plea was raised for the first time that the suit was barred by limitation, having regard to the proviso to section 148 of the North-Western Provinces Rent Act, 1881; and this was the only point argued in appeal.

Babu *Ratan Chand* for the appellant contended that on a proper construction of section 148 of the North-Western Provinces Rent Act, 1881, and the proviso to that section, the plaintiff's suit was barred by the special limitation therein prescribed.* Under the proviso to section 148 a suit such as the plaintiff's present suit must be brought within a year from the termination of the inquiry held by the Revenue Court under section 148. In this case that inquiry had terminated on the

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* Section 148 of Act No. XII of 1881 is as follows:—

"148. When, in any suit between a land-holder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit;

"and 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:

"Provided 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."

15th of January, 1897, and the present suit had not been instituted until the 13th of May, 1899. The learned vakil relied on the decision of the High Court in the case of *Dasrath Rai* v. *Bhirgu Rai* (1).

Maulvi *Muhammad Ishaq* for the respondent contended that the only question which a Court of Revenue had jurisdiction to determine under section 148 of Act No. XII of 1881, when the right to receive rent was disputed, was that of the "receipt and enjoyment of the rent actually and in good faith before and up to the time when the right to sue accrued." There was no jurisdiction to try the question of title to the rent on any ground other than such receipt and enjoyment; much less any jurisdiction to try any question of proprietary title to the land out of which the rent issued. The proviso should be construed as dealing with the same subject matter as the section itself, and reading it in that light it is clear that it was intended to limit only the right to recover in a Civil Court the very same rent which is the subject of the first portion of the section, and that it was not intended by the Legislature that the right to establish proprietary title to the land should be limited. The following rulings were relied on:—*Kishen Coomar Shaha* v. *Jeebun Singh* (2), *Hurronath Roy* v. *Shristeedhur Doss* (3), *Ishur Chunder Sen* v. *Beepin Behary Roy* (4), *Muhammad Salim* v. *Abdul Rahim* (5) and *Ganga Prasad* v. *Baldeo Ram* (6).

It was sought to distinguish the ruling in *Dasrath Rai* v. *Bhirgu Rai* (7) from the present case. But, if that ruling was not distinguishable, it was submitted that it was wrongly decided and was contrary to a long series of previous decisions.

STANLEY, C.J.—The question for decision in this case arises upon the true interpretation to be placed upon section 148 of the Rent Act of 1881. One Ram Lal brought a suit for the rent of a holding for the years 1302 and 1303 Fasli against the tenants of the holding. The tenants pleaded that they paid the rent for the years in question *bonâ fide* to one Munawar Shah, the plaintiff in the present suit. An inquiry was held by the

(1) (1901) I. L. R., 23 All., 434.
(2) (1866) 5 W. R., Act X Rulings 85.
(3) (1867) 7 W. R., 152.
(4) (1876) 25 W. R., 451.
(5) Weekly Notes, 1885, p. 261.
(6) (1888) I. L. R., 10 All., 347.
(7) (1901) I. L. R., 23 All., 434.

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Revenue Court under the provisions of section 148 of the Act, to which I have referred, and this Court found that the defendant-appellant Ram Lal was entitled to the rent in question, and his claim was decreed on the 15th of January, 1897. The present suit was then instituted by Munawar Shah on the 13th of May, 1899, against Ram Lal for a declaration of the plaintiff's title to the property and for possession. The plaintiff's claim has been decreed. The present appeal has been preferred against this decree.

The only question which the learned vakil for the appellant has raised before us is a question of limitation. His contention is that the plaintiff's suit having been brought on the 13th of May, 1899, that is, more than a year after the determination of the inquiry held under section 148 of the Rent Act, the suit was barred under the proviso to that section; that under the proviso to section 148 a party must bring his suit within a year to establish his title to the property out of which the rent issued, in respect of which an inquiry under that section has been held.

On the other hand, it is contended on behalf of the respondent that the proviso to section 148 is limited to, and merely deals with the rent referred to in the earlier portion of the section, namely, rent which has already accrued due, and has been actually received and enjoyed by a third party.

The appellant relies upon a ruling in appeal of a Bench of this Court in the case of *Dasrath Rai* v. *Bhirgu Rai* (1). This ruling, if it be accepted by us as correct, certainly establishes the appellant's case. In it it was held that a suit similar to that in the present case, which was instituted more than a year after the termination of the inquiry held under section 148 of the Rent Act, was barred by limitation. The learned Judges who decided that appeal drew a distinction between that case and two earlier cases which were cited before them, namely, the cases of *Muhammad Salim* v. *Abdul Rahim* (2) and *Ganga Prasad* v. *Baldeo Ram* (3); but I confess that I am unable to appreciate the distinction. The facts in each case appear to

(1) (1901) I. L. R., 23 All., 434. (2) Weekly Notes, 1885, p. 261.
(3) (1888) I. L. R., 10 All., 347.

me to be substantially alike. In the first of these two cases, it was held by Brodhurst and Tyrrell, JJ., that section 148 only applied to suits to recover rent which the tenant pleaded that he had paid to the intervenor; that the suit before them was one for ejectment of the defendant from land which was in the use and occupation of the plaintiff, and was governed by the longer term of limitation provided in the Statute of 1877. In the latter of these cases Mr. Justice Straight held, upon a somewhat similar state of facts, that the meaning of section 148 was, that when an intervenor has succeeded in a revenue suit in convincing a Revenue Court that he has been in receipt and enjoyment of certain rent distrained for or claimed, or *vice versâ*, the plaintiff or the successful intervenor may go to the Civil Court with a suit to have it declared that he had a title to receive that particular rent which the Revenue Court refused to give him, and that if he does institute such a suit, he must do so within one year from the date of the Revenue Court's decision. But the learned Judge goes on to observe as follows:—"I cannot hold that by the terms of either of those paragraphs (*i.e.* of section 148 of the Rent Act, 1881), the period of limitation provided for a suit for a declaration of title to, and possession of, immovable property in the limitation law, is thus summarily abridged." In addition to these two cases we have been referred to a number of cases which were decided under the corresponding section of the earlier Act No. X of 1859, which is in substance similar to section 148 of the Act of 1881. The decisions are uniform and are consonant with the two earlier decisions of this Court to which I have referred, as regards the true meaning of section 148 of the Act of 1881. I need only mention one or two of these decisions, namely, *Kishen Coomar Shaha* v. *Jeebun Singh* (1), *Hurronath Roy* v. *Srishtee-dhur Doss* (2), *Ishur Chunder Sen* v. *Beepin Behary Roy* (3). It will thus be seen that the recent decision reported in the case of *Dasrath Rai* v. *Bhirgu Rai* runs counter to a long series of uniform decisions upon this question.

Turning to the section, it is unfortunate that the meaning of the Legislature is not by any means happily expressed. It

(1) (1866) 5 W. R., Act X Rulings, 85. (2) (1867) 7 W. R., C. R., 152.
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is undoubtedly vague; but when the language is carefully considered it seems to me reasonably clear that the decision in the case of *Dasrath Rai* v. *Bhirgu Rai* (1) cannot be supported. The first paragraph of the section deals with disputes in respect of rent which has already accrued due, and has been in good faith received and enjoyed. There is no reference in it whatsoever to future rent. The second paragraph describes the rent in respect of which the dispute is as "the rent," and the use of this word "the" leads undoubtedly to some ambiguity in the section, because it is carried on in the proviso. Now it is clear that the words "the rent" in the second paragraph denote the rent mentioned in the first part of the section, and that rent alone. Instead of the word "the," the more appropriate word would have been "such". That it refers to the rent already received and enjoyed, and does not apply to future rent, is clear, I think, from the fact that it is coupled with the words "such receipt and enjoyment," *i.e.* the receipt and enjoyment referred to in the first portion of the section. In the proviso the same words "the rent" are used. It appears to me that the rent which is there referred to also means, and is confined to, the rent mentioned in the paragraph immediately preceding, and must be interpreted as meaning "such rent," *i.e.*, the rent already received and enjoyed. The proviso must be treated as dealing with the same subject-matter as the section treats of to which it is a proviso. Reading then the words "the rent" in the proviso, and the preceding paragraph as equivalent to "such rent" light is thrown upon the meaning of the section. The proviso will run in this way:—"Provided that the decision of the Court shall not affect the right of either party entitled to such rent to establish his title to such rent by suit in the Civil Court if instituted within one year from the date of the decision." It appears to me that this gives a clear and intelligible interpretation to the section, and that it was not intended by the Legislature that the right to establish proprietary possession or title to the property should be limited in the way that is contended for. It was only intended to limit the right to recover in a Civil Court the very same rent which

(1) (1901) I. L. R., 23 All., 434.

is the subject-matter of the first portion of section 148. For these reasons I am of opinion that the appeal must fail, and that it should be dismissed with costs.

KNOX, J.—I was a party to the decision in *Dasrath Rai* v. *Bhirgu Rai* (1). On hearing the arguments addressed to this Court this day, and upon considering the general course of rulings both of this Court and in the Calcutta High Court from the time when Act No. X of 1859 became law—a course of rulings which, as the learned Chief Justice has pointed out, has been uniform throughout, with the exception of this last ruling—I am satisfied that the interpretation which was put by them on this section is the correct interpretation, and that the proviso attached to section 148 was intended to refer only to the title to receive the rent which had been put in suit between the landholder and the tenant, and to claim which the intervenor had come forward. There are cases in this Court, as for instance the case of *Bhagmanee Koonwer* v. *Furzund Ali* (2), which point out that a Revenue Court is strictly confined to the question, *viz.* receipt and enjoyment of rent up to the date of the commencement of the suit, and that the title in the land could not be looked into. It appears to me that it would be inequitable under such circumstances to hold that this proviso is to extend further than I have pointed out above. For these reasons I would concur in the order proposed.

BANERJI, J.—I also agree with the learned Chief Justice, but do so with some hesitation. This hesitation is due to the unsatisfactory manner in which section 148 of Act No. XII of 1881 is worded.

It was probably the intention of the Legislature that the suit referred to in the proviso to that section should be a suit to establish title to receive the rent of the holding in question, and not the particular rent claimed in the suit. This intention, however, has not been given effect to in the proviso as it stands. Having regard to the wording of that proviso, the numerous cases decided by the Calcutta High Court with reference to the corresponding section 77 in Act No. X of 1859, cited by

(1) (1901) I. L. R., 23 All., 434. (2) (1866) N.-W. P. H. C. Rep., 1866, R. C. A., 20.

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the learned vakil for the respondent and quoted in Mr. House's Edition of the Rent Act, p. 294, and the earlier cases in this Court referred to by the learned Chief Justice were, I think, correctly decided, and the ruling in those cases should be adhered to. I would dismiss the appeal with costs.

BY THE COURT.—For the reasons stated in the judgment of the Court the appeal is dismissed with costs.

Appeal dismissed.

1902
August 13.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Knox and Mr. Justice Blair.

ALI NASIR KHAN (PLAINTIFF) *v.* MANIK CHAND AND ANOTHER (DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Construction of document—Evidence—Act No. 1 of 1872—(Indian Evidence Act), section 35—Effect, if any, of omission of an entry from a public document—Rules of the Board of Revenue for the settlement of Gorakhpur and Basti Districts (Board's Circulars, 1890, 8—1, section 38)—Meaning of the word "nadarad."

The plaintiff claimed a right of pre-emption in respect of a share in a certain mauza situated in the district of Gorakhpur. He relied principally on a wajib-ul-arz of the year 1866 as affording evidence of a custom of pre-emption prevailing in the village. The defendants contended that the wajib-ul-arz of 1866 was evidence only of a contract, and not of a custom, and further put forward the "memorandum of village customs" prepared at the settlement of 1886-87 as showing that the right of pre-emption, whether by custom or contract, no longer existed.

The wajib-ul-arz of 1866 contained the following provision as to the right of pre-emption:—"Every co-sharer is entitled to transfer by sale or mortgage, but the condition of his doing so is, that he who wants to transfer do so, firstly, in favour of near co-sharers; secondly, in favour of other co-sharers of the thok; and thirdly, in favour of strangers." The memorandum of village customs prepared at the settlement of 1886-87 was prepared under rules framed by the Board of Revenue for the settlement of the districts of Gorakhpur and Basti. The portion of those rules material to the present case is as follows:—"A memorandum of the village customs will be appended to each khewat by the Assistant Settlement Officer when he verifies the jamabandi, and it will take the place of the document hitherto known as the wajib-ul-arz." * * * * "In regard to any custom or constitution peculiar to the mahal, the following matters should be noted [class (*d*), section 25]: (*a*) pre-emption (as regards mahals which belong to other than Muhammadan

* Second Appeal No. 1157 of 1900 from a decree of E. O. E. Leggatt, Esq., District Judge of Gorakhpur, dated the 11th of September 1900, confirming a decree of Maulvi Syed Muhammad Abbas Ali, Subordinate Judge of Gorakhpur, dated the 5th of June 1900.