distinct and separate liabilities in one suit; and neither in the Civil Court under Section 8 of Act VIII of 1859, nor in the Collector's Court under any law that I ever heard of, can a cause of action against *A* and *B* for one demand be joined with a cause of action against *A*, *B*, and *C*, or a cause of action against *C* alone. They are not causes of action against the same parties.

In my opinion, the claim against Juggut Tara and Puddo Coomaree for the rent of a portion of the tenure cannot be joined in the same suit with the cause of action against Preonath and Mothooranath or their representatives.

I think it clear that Preonath had a right to insist that he and Mothooranath were alone liable for the rent, and that he is not liable as to any part of the rent jointly with Juggut Tara and Puddo Coomaree. If these ladies are his tenants, it is clearly prejudicial to him that they should be permitted to pay rent directly to the superior holder. It would tend to nothing but confusion of rights if any thing of the sort could be allowed.

It would materially affect the value of Preonath's tenure if he were going to sell it, if it were found that another person was paying rent for a portion of it.

Mr. Justice Mitter says—"Rightly or "wrongly, the Deputy Collector has passed a "decree against those two ladies, and as "they are satisfied with it, the appellant Preo- "nath ought not to be allowed to complain, "when it is clear that the effect of that "decree has been to reduce his liability."

But I think that a man who, if liable at all, is liable solely, has a right to insist that he shall not be made liable jointly with a stranger. He has a right to say, "I do not "choose to run the risk of the costs of an "action for contribution to which I shall be "exposed if a joint decree passes against "myself and another, if that other chooses "to pay the whole debt."

In English Courts of justice it has long been settled that if an action is brought against two persons on a contract alleged to be joint, if one allows judgment to go by default or expressly admits the debt, and the case goes on against the other whose liability to the entire debt is proved on the trial, but it is shewn that the parties against whom judgment has gone by default and also has admitted the debt is not jointly liable. Judgment cannot be given as against the defendant who has appeared and defended, jointly with the one who has made no defence, but the suit must be dismissed altogether.—(See Sheriff and Wilkes, 1 East's Reports, 52; Gray and Palmer, 1 Espinasse's Reports, 135.)

Unless the plaintiff is allowed to amend by abandoning his suit against the other defendant, as was the case in Greaves and Humphries, 4 Ellis and Blackburn, 851, I think that as regards the surety defendants, the Deputy Collector had no jurisdiction. I may add that they are sureties for Chundee Pershad and his heir, and that by the discharge of Chundee Pershad's heir, Buroda Pershad, all remedy against them is gone.

I therefore think that the Chief Justice was right in holding that the suit must be dismissed, and I would affirm his judgment with costs.

The 2nd June 1870.

Present:

The Hon'ble J. B. Phear and Sir Charles Hobhouse, *Bart.*, *Judges.*

Appellate Court—Additional evidence—Section 355, Civil Procedure Code—Section 57 Act II of 1855.

Case No. 178 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Beerbhoom, dated the 10th November 1869, *affirming a decision of the Moonsiff of Kanderah, dated the 27th April* 1869.

Maharajah Juggut Indur Bunwaree (Defendant) *Appellant,*

versus

Bhubo Tarinee Dossee (Plaintiff) *Respondent.*

Baboos Juggodanund Mookerjee and *Romesh Chunder Mitter* for Appellant.

Baboos Chunder Madhub Ghose, Anund Chunder Ghossal, and *Unnoda Pershad Banerjee* for Respondent.

Where an Appellate Court received additional evidence, recording only that the papers were material and important, there was held to be no sufficient com-

pliance with the proviso of Section 355. Civil Procedure Code, which requires the reason for admitting additional evidence to be stated.

The improper reception of evidence does not necessarily make the evidence no evidence at all; nor does it warrant reversal of the Lower Appellate Court's decision if justified by sufficient evidence independently of the evidence improperly admitted.

Phear, J.—We think that the Lower Appellate Court committed an irregularity in receiving at the hearing on appeal papers and documents which had not been produced before, without giving any better reason than the following:—"The papers "alluded to above being material and impor- "tant documents, the Court has accepted "them."

Under Section 355 of the Procedure Code, the Appellate Court is forbidden to receive additional evidence except when it is necessary to enable the Court to pronounce a satisfactory judgment, or for any other *substantial* reason; and the latter part of the Section obliges the Appellate Court, whenever additional evidence is so admitted, to record its reasons for admitting it. Also, by an earlier Section in the Code (Section 128) it is enacted that no documentary evidence of any kind which the parties or any of them are desirous to file shall be received at a subsequent stage, that is, after the first hearing, unless good cause be shewn for their non-production earlier. Now, in the present case it does not appear that any cause is shewn for the non-production of the documents in question at an earlier stage of the proceedings, and we cannot hold the mere statement that "the papers are material and important documents" to be a sufficient compliance with the proviso of Section 355 which requires the reason to be stated why the Appellate Court admitted the evidence.

The special appellant argues that this evidence, in consequence of being improperly received, is not evidence at all, and that inasmuch as the judgment of the Lower Appellate Court is to a considerable extent founded on it, that judgment ought to be set aside.

We are not prepared to say that the improper reception of evidence in the manner we have mentioned necessarily has the effect of making the evidence not evidence at all between the parties. In this instance this evidence simply stands in the position of evidence which has been improperly admitted; and that being so, Section 57 of the Evidence Act forbids us to reverse the decision of the Lower Appellate Court on the ground of improper admission of evidence, if it appears to us that, independently of this evidence, there was sufficient evidence to justify the decision.

Now, unquestionably, putting the whole of this evidence on one side, there is still very strong evidence to support the decision of the Lower Appellate Court. The only question before that Court was this, namely, whether or not the chur in dispute belonged to Nyehattee, and the Subordinate Judge says that "An Ameen was deputed by the "Court of first instance, who, after institut- "ing local inquiry has recorded in his *ro-* "*edad* that the disputed chur has accreted "contiguous to the main land of Mouzah "Nyehattee, and that the same has also "been proved by the evidence of the wit- "nesses in the *locale*."

This evidence is amply sufficient to prove that the chur did belong to Nyehattee. There is nothing, so far as we understand, that tends to contradict this testimony or to show that it is false; and in the face of it we feel it is impossible for us to say that there was not sufficient evidence, independently of the evidence objected to, to justify the decision which the lower Court has come to.

We therefore dismiss this appeal with costs.

The 2nd June 1870.

Present:

The Hon'ble L. S. Jackson and E. Jackson, *Judges.*

Contract—Verbal agreement—Registration.

Case No. 693 of 1870.

Special Appeal from a decision passed by the Officiating Judge of Moorshedabad, dated the 28th December 1869, modifying a decision of the Subordinate Judge of that District, dated the 27th August 1869.

Gooroo Pershad Roy and another (Defendants) *Appellants,*

versus

Roy Dhunput Singh (Plaintiff) *Respondent.*