doing as would make them liable to pay damages. That decree was consequently an invalid decree, and the Lower Appellate Court was substantially right in reversing it. For these reasons we think that we ought not, in special appeal, to interfere with the decision which the Lower Appellate Court has passed.

We therefore dismiss this appeal with costs.

But we think it right to add, if it is necessary to do so, that this decree is without prejudice to any right of suit which the plaintiff may be advised he has against Bajah Singh on the cause of action here sued upon, inasmuch as, in our opinion, Bajah Singh was wrongly made a party to this suit by the act of the Court itself.

The 2nd December 1873.

Present:

The Hon'ble J. B. Phear and G. G. Morris, *Judges.*

Rent-suit—Land for building purposes—Jurisdiction—Small Cause Court.

Reference to the High Court by the Judge of the Small Cause Court at Bhaugulpore, dated the 16th September 1873.

Gokul Chund Chatterjee, *Plaintiff,*

versus

Mosahroo Kandoo, *Defendant.*

A Small Cause Court has jurisdiction to entertain and determine a suit for the rent of land situated in a village in the interior of a district, and used partially for building purposes.

Case.—UNDER the provisions of section 22 of Act XI. of 1865, I have the honor to refer the above case for opinion to their Lordships the Hon'ble the Judges of the High Court.

The plaintiff sues to recover Rs. 5 from the defendant as rent for 8 cottahs of land, which he let to the defendant at a stipulated rent per annum to enable the latter to build a dwelling-house thereupon. This is an undefended case, the defendant not having appeared, although the summons is proved to have been duly served. The plaintiff, who has entered appearance, says that the defendant has built a few huts on a portion of the land, and on the remainder vegetables are grown which are sold by the defendant. The land in question is situated in a village in the interior of the district, and is not in a town. The point upon which I respectfully solicit the opinion of the Hon'ble High Court is one of jurisdiction. Is such a suit cognizable by the Small Cause Court or by the ordinary Civil Courts under the Rent Law?

The plaintiff contends that "a suit for rent of land used for building purposes is cognizable in the Court of Small Causes," and cites, in support of his statement, High Court ruling noted in the margin. Reading section 6 of Act XI. of 1865 with the ruling above quoted, I have some doubts as to the jurisdiction of the Court in cases of rent for lands situated in villages. The ruling quoted refers probably to rent for similar lands in towns.

Sutherland's Weekly Reporter, Volume XIX., page 308.

The judgment of the High Court was delivered as follows by—

Phear, J.—We are of opinion, on the statement of the facts presented to us by the Judge of the Small Cause Court, that the case substantially falls within the ruling of this Court which is reported in the 19 Weekly Reporter, page 308, and that the Small Cause Court has jurisdiction to entertain and determine the suit.

The 4th December 1873.

Present:

The Hon'ble J. B. Phear and G. G. Morris, *Judges.*

Landlord and Tenant—Onus Probandi.

Case No. 194 of 1873.

Special Appeal from a decision passed by the Officiating Judge of Patna, dated the 17th September 1872, reversing a decision of the Subordinate Judge of that District, dated the 11th May 1872.

Mohun Mahtoo (Defendant), *Appellant,*

versus

Meer Shumsool Hoda (Plaintiff), *Respondent.*

Mr. R. T. Allan and *Baboo Bama Churn Banerjee* for Appellant.

Moonshee Mahomed Yusuf for Respondent.

As long as the relationship which arises out of a lease subsists, the lessee (tenant) is bound to pay to the lessor (landlord) the rents reserved therein. A tenant, denying a landlord's claim to rent on the allegation that the relationship has terminated, is bound to prove his allegation.

Phear, J.—WE are of opinion that the judgment of the Lower Appellate Court is

substantially correct and unimpeachable upon special appeal. It is quite clear that the defendant obtained possession of the property, which is the subject of suit, under a lease from the plaintiff; and, as long as the relation which arose out of that issue subsisted, the defendant was bound to pay to the plaintiff the rents reserved therein. The defence set up was that the plaintiff had terminated the relation which originated in this lease by taking *seer* possession of the property covered by it. If this were so, no doubt it would be a complete answer to the claim of the plaintiff for rents alleged to have accrued due after the period of time at which he had taken possession. The Judge is quite right, we think, in the view which he took, that the burden of proving that the relationship of landlord and tenant had come to an end in this way lay upon the defendant, who alleged that it had so come to an end.

The Lower Appellate Court has found upon the evidence that no such termination of the relation has been effected; the lease is still subsisting, and that, therefore, the defendant is bound to pay the rents to the plaintiff.

The Judge of the Lower Appellate Court makes the remark that possibly the defendant has abstained himself of late from collecting the rents from the ryots, and in that sense may possibly have given up the holding. But he cannot, by any act of his own, unless it is justified by the terms of his lease or by the conduct of his landlord, relieve himself from the obligation which the original contract has placed upon him. And that appears to have been the view of the matter taken by the Judge.

It has been urged before us in argument that at any rate the plaintiff had, during the period for which he is seeking these rents from the defendant, made some collections from the ryots. If that assertion were correct, no doubt the money which he so got would, inasmuch as it ought to have been paid by the ryots to the defendant, rightly be considered as money belonging to the defendant, and, in this suit, the defendant would have a right to ask that this money should be set off against the plaintiff's claim for rent. He has not made such a request in so many terms. But, if there was any ground for considering that the plaintiff had money of this sort belonging to the defendant in his hands, we think there would be no difficulty in giving the defendant the benefit of it in this suit. But, so far as we understand the judgment of the Lower Appellate Court, the Judge is clearly of opinion that the defendant has failed altogether to prove that the plaintiff has made any such collections from the ryots. Possibly the ryots have paid money into the Moonsiff's Court in the name of the plaintiff. If that be so, there is no reason pointed out why the defendant should not yet obtain that money. But he has no right of set-off against the plaintiff's claim in this suit, unless he makes out that that money has actually come into the plaintiff's hand.

This appeal must be dismissed with costs.

The 4th December 1873.

Present:

The Hon'ble F. A. Glover, *Judge.*

Evidence Act, s. 73—Signatures.

Case No. 902 of 1873.

Special Appeal from a decision passed by the Judge of Midnapore, dated the 30th January 1873, reversing a decision of the Moonsiff of Gurbetta, dated the 18th September 1872.

Tara Pershad Tangee (Defendant), *Appellant,*

versus

Lukhee Narain Paurai and others (Plaintiffs), *Respondents.*

Baboo Bungshee Dhur Sen for Appellant.

Baboo Bama Churn Banerjee for Respondents.

Where certain ryots swore that they got their pottahs from the hands of the person who professed to sign them, this was *held*, under the Evidence Act, section 73, as "proving, to the satisfaction of the Court," that the signatures were those of the lessor.

Glover, J.—THE question in this case is whether the plaintiff, who sued for arrears of rent at the rate of Rs. 23 a year, has