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jurisdiction, but he did nothing of the kind, and the case can be clearly distinguished from *Bejoy Madhub Chowdhury v. Chandra Nath Chuckerbutty* (1), where the Magistrate said he was unable to satisfy himself. He does not even say that he has had the slightest difficulty. His order is as follows: "No evidence produced by either side, lands attached under section 146." Whatever view, therefore, be taken of the rulings, that order is clearly incompetent and without jurisdiction.

The order must be set aside and the lands released from attachment.

S. K. B.

Rule absolute.

(1) (1909) 14 C. W. N. 80.

APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Richardson.

1912
 June 11.

CHANDRA MADHAB BARUA

v.

NOBIN CHANDRA BARUA.*

Account, suit for—Principal and Agent—Proprietor appointed by the co-proprietors as Common Manager for payment of joint debts, whether an agent of the latter and of the heirs of a deceased proprietor—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 89—Plea of limitation under the Act taken on remand after previous unsuccessful plea of limitation under Act VIII of 1869, s. 30.

A proprietor appointed by the other co-proprietors of an estate as common manager thereof, for the purpose of realizing its profits and appropriating them to the payment of their joint debt, is an agent of the other

* Appeal from original decree, No. 326 of 1910, against the decree of F. Emerson, Subordinate Judge of Dhubri, dated May 21, 1910.

proprietors and of the legal representatives of a proprietor since deceased within Art. 89 of the Limitation Act (IX of 1908), and the period of limitation of a suit for accounts brought by the latter against such manager is governed thereby.

Where repeated demands for accounts were alleged in the plaint to have been made, but the dates were not mentioned nor proved, and the demands appeared to have continued to the termination of the agency, it was *held* that limitation commenced to run from the date of the termination of the agency.

A plea of limitation under the Limitation Act may be raised on the hearing after the remand of a case by the High Court notwithstanding the failure of a similar plea taken only under s. 30 of Act VIII of 1869 on the first hearing in the Court below.

THE defendant-appellant Chandra Madhab Barua, and his elder brother, Chandi Charan Barua, were the owners of an 8 as. share in a joint forest estate in the district of Goalpara, the other 8 as. share being the property of their nephew, Nanda Kumar Barua. The estate became heavily involved owing to the expenses of certain litigation, and the appellant was, at the end of 1293 B. S., appointed common manager of the *ijmali* forest by the other co-sharers, on the understanding that the whole profits thereof were to be appropriated to the payment of the joint debt. Chandi Charan died in 1300, and Nanda Kumar in Sraban 1306 (corresponding to July-August 1899). The latter before his death had demanded from the appellant his accounts from 1293 to 1297. A committee was called by the appellant and the matter discussed, but no proper accounts were taken or given. After the death of Nanda Kumar, the plaintiff-respondents, who are his sons and heirs, began to press the appellant for an account of his administration, in consequence of which he withdrew from the management by written notice on 3rd Magh 1308 (16th January 1902). The dates of the several demands were not mentioned in the plaint nor proved, but

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they appeared to have continued till the termination of the management.

The appellant thereafter instituted a suit for partition against the present respondents in the Court of the Subordinate Judge of Dhubri, being suit No. 12 of 1902, and one of the issues raised therein was his liability to render accounts before the suit could proceed, and the point was decided in his favour. The present respondents then filed a separate suit for accounts, on the 27th Bhadro 1311 (corresponding to 12th September 1904), numbered 14 of 1904, in the Court of the Subordinate Judge of Zilla Goalpara, who, by his judgment, dated the 26th August 1907, held that it was barred by limitation under s. 30 of Act VIII of 1869, and dismissed the same. The respondents thereupon appealed to the High Court in Regular Appeal No. 459 of 1907, and the learned Judges (Coxe and Richardson JJ.) reversed the order, by their judgment, dated the 14th May 1909, and remanded the case under Order XLI, rule 43 of the Civil Procedure Code, for determination on the issues. The case was heard by the Subordinate Judge of Dhubri who held, on the 21st May 1910, that the appellant was liable to render accounts and rejected the plea of *res judicata*, being of opinion that there was nothing in the judgment of the Subordinate Judge in suit No. 12 of 1902 which amounted to a decision on the question of the general liability of the appellant to furnish accounts. On the question of limitation he found that Art. 89 of the Limitation Act (IX of 1908), which would have applied to a suit between Nanda Kumar and the appellant, did not apply as between the present respondents and the latter, but that the case fell under Art. 120; that Nanda Kumar would have been entitled to sue for accounts up to Sraban 1303, to which right the respondents had succeeded, and that this right was

continued, under s. 8 of the Limitation Act. He accordingly directed the appellant to render accounts from Sraban 1303 to Magh 1308. Chandra Madhab, thereupon, appealed to the High Court.

Mr. C. R. Das, Babu Provarash Chandra Mitter and Babu Susil Madhub Mullick, for the appellant.

Babu Manmatha Nath Mukerjee, for the respondents.

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STEPHEN AND RICHARDSON JJ. This appeal arises out of a suit brought by the plaintiffs for accounts relating to the management of a certain forest mehal from 1293 to 1308. The management was conducted by one Chandra Madhab Barua on behalf of Nanda Kumar Barua, his nephew, who was his co-sharer as to the half of the property. The property got involved in debt, and it was agreed that the best way was for the defendant to take charge of it and to pay off the liability until the property was freed from debt. This state of things continued from the year 1293 to 1306. At a certain time in 1298 the plaintiffs appear to have demanded accounts from Chandra Madhab of his dealings with the property. This demand was refused; at least it was never complied with. Some time after Nanda Kumar died. The business then came to an end in 1308, and this suit was brought on the 12th September 1904, which is a little less than three years after the termination of the business. The Judge of the Court below has held that the suit is not barred by limitation, and this is the principal point which we have to consider in this case. There is a point also as to *res judicata*, but there is no substance in it. This case has already been before this Court on a question as to whether the suit was barred under section 30 of Act VIII of 1869; and the Court held that the limitation provided for by that Act did not apply. It has been

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suggested that the point of limitation ought to have been taken then or not at all. There is no authority for this proposition, and we find that it is still open to the defendant to take the point of limitation.

The first question that arises is under which Article of the Limitation Act the question is to be dealt with. It is suggested on behalf of the defendant that Article 89 is applicable to this case. The plaintiffs contest this view, and say that the relation between the parties in this case is not one of agency. It is difficult to see what else it can be. The defendant was certainly an agent up to the time of the death of Nanda Kumar. After his death we cannot conceive how the defendant remained in possession of the property or how he had any dealings with it except as the agent of the representatives of Nanda Kumar. It is *not suggested that he possessed this half of the property in his own right, and if he was not an agent he must have been a trustee, a position which under the circumstances seems impossible.* We, therefore, hold that his agency was continued after the death of Nanda Kumar, after which event the present plaintiffs inherited the rights of Nanda Kumar and became, therefore, his principals. We, therefore, hold that Article 89 applies to this case.

The next question is how that Article will apply, and the question arises whether any demand has been made, because if it has not, the commencement of the limitation will be the termination of the agency. As we have said, there is evidence, which we cannot overlook, that a demand was made by Nanda Kumar which met with no attention. Limitation, therefore, will run from the date of the demand by Nanda Kumar so far as the obligations of the defendant were incurred during his life-time. Since his death we learn from the plaint that repeated demands have been made by the plaintiffs.

The dates of these repeated demands are not given and not proved. But from the language of the pleading we must suppose that the demands were going on as long as the business was in existence, and, therefore, limitation will run from the termination of the agency business which, as we have said, was a little less than three years before suit. The defendant admits that he is liable to accounts from Bhadra to Magh 1308, and, therefore, accounts for this period must be rendered. As to the rest of the case we hold that the suit is barred. This appeal is, therefore, allowed and the decree of the lower Court is modified in accordance with what we have said. The parties are entitled to proportionate costs.

E. H. M.

Decree modified.

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APPELLATE CIVIL.

Before Mr. Justice Carnduff and Mr. Justice Chapman.

MAJIBAR RAHMAN

v.

MUKTASHED HOSSEIN.*

1912
 June 11.

*Agreement against public policy—Contract Act (IX of 1872), s. 23—
 Compromise forbidden by law—An agreement to compound a non-com-
 poundable offence, void—Criminal breach of trust—Mortgage—Illegal
 consideration.*

It is contrary to public policy to compound a non-compoundable criminal case, and any agreement to that end is wholly void in law :

Held, therefore, that a mortgage bond executed by a *gomastha* in favour of his master for withdrawal of a prosecution for criminal breach of trust,

*APPEAL from Appellate Decree, No. 2306 of 1909, against the decree of F. Roe, District Judge of 24-Parganas, dated June 1st, 1909, confirming the decree of Basanta Kumar Pal, Munsif of Basirhat, dated Dec. 23, 1908.