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of Beng. Act VIII of 1869, and, therefore, it was necessary to be brought within one year after the termination of the agency of such agent. That, however, in my opinion, would not debar the plaintiffs from taking advantage of the general provisions of s. 19 of the Limitation Act of 1877, by which a new period of limitation, according to the nature of the original liability, is allowed, provided that the acknowledgment of liability is made in writing before the expiration of the period prescribed for the suit. The plaintiffs might also have sued the defendant, upon a promise to pay, notwithstanding that the suit was barred under the provisions of s. 30 of the Rent Act, provided that upon such promise a suit could be maintained with reference to cl. 3, s. 25 of the Contract Act. But here there was no promise to pay, there was merely an acknowledgment of liability, and that acknowledgment was given at a time when the period prescribed for the bringing of the suit by s. 30 of the Rent Act had already expired. I think, therefore, that the Judge was right in holding that this suit was barred, and the claim as against the principal being barred, of course, there would be no enforcement of liability as against the sureties. I think, therefore, that this special appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Jackson and Mr. Justice McDonell.

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RUKHINEE BULLUBH (JUDGMENT-DEBTOR), PETITIONER *v.* BROJONATH SIRCAR AND OTHERS (DECREE-HOLDERS, ALSO AUCTION-PURCHASERS), OPPOSITE-PARTIES.*

Auction-Sale—"Material Irregularity"—Liberty to bid—Conduct calculated to deter Bidders—Act X of 1877, *ss.* 294, 311.

The holder of a decree, in execution of which property is sold, is absolutely bound under s. 294 of Act X of 1877 to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission.

* Appeal from Original Order, No. 332 of 1878, against the order of Baboo Menu Lall Chatterjee, Subordinate Judge, Moorshedabad, dated the 30th of August 1878.

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The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity," sufficient to render the sale invalid under s. 311 of the same Act.

Baboo *Mohini Mohun Roy* and Baboo *Bama Churn Banerjee* for the appellants.

Baboo *Gooroo Dass Banerjee* for the respondent.

THE facts of this case sufficiently appear from the judgment which was delivered by

JACKSON, J.—The facts of this case are, that Ranee Hur Soondury brought a suit against Brojonath Sircar and others, Brojonath having been, as he admits himself, her agent for twelve years, and having the entire management of her property, she alleged that he had not accounted for the monies, which came into his hand as such agent, and sued him for an account.

The suit was first thrown out on the ground of limitation, but on appeal to this Court, that decision was set aside, and the case went back for trial on the merits. After trial, it was again dismissed, and the Ranee appealed to this Court. It seems that she was remiss in the prosecution of the appeal, and, indeed, has since died we understand; and the defendant, while the proceedings were in suspense, proceeded to execute the decree in his favor by which the suit had been dismissed, and he was entitled to costs. These costs, it seems, amounted to about Rs. 900. He was allowed to execute, and in execution, a mehal belonging to the Ranee was attached and ordered to be sold. That mehal, it seems, was let in patni to a member of the Nizamut family, and gives a clear rental of over Rs. 500. Before the sale, the Ranee's pleader presented a petition to the Court, praying that the property might not be sold, and setting out circumstances connected with the recovery of rent from it, which might produce an unfavorable effect if the sale were forced; but on that petition no favorable order was made. The defendant executing the decree then applied to the Court for leave to purchase the property. Upon that petition no definite order was made. The only order passed was that it

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be put on the record. The sale came on and the property was put up. Whilst the bidding went on, the execution-creditor made audible remarks to his agent, who was bidding for him, to the effect that the state of the property was not good, and that he was not to bid. These observations of his were, it seems, audible, and we may assume, were heard. The Court below indeed finds that the observations were heard by the bystanders. The result was that this property, yielding an income of Rs. 500 yearly, was knocked down to the judgment-creditor at Rs. 1,400. The appellant comes before us, having applied ineffectually to the Court below not to confirm the sale, and prays that the sale may be set aside.

Now, it appears to us, that there are not one but many reasons why this sale should be set aside. In the first place, we consider that under the existing law, the holder of a decree, in execution of which a property is sold, is absolutely bound to have express permission from the Court before he can purchase the property. Whether this objection be taken and pressed or otherwise, the sale is invalid, unless he has got explicit permission. In the first place, it appears to us that the terms of s. 311 are quite wide enough to include an objection of the kind taken in this case, *viz.*, that the Court below, which conducted or authorized this sale, was wrong in allowing the observations made in its hearing by the decree-holder to his agent to pass unnoticed, and permitting the decree-holder after that to purchase the property. That appears to us to be a material irregularity, that is to say, language used for the purpose of influencing or calculated to influence other purchasers, and preventing them from bidding a fair price for this property. But in addition to that, and apart from the provisions of ss. 294 and 311, it appears to us that the Court allowing execution of this decree, the parties before it being only the plaintiff and the defendant, that is to say, the purchaser not being a third party, was entitled to the fullest control over the conduct of those parties in dealing with the suit, and ought to have taken care that the party executing had not the assistance of the Court in injuring the opposite party under colour of execution. Now, if the respondents before us were allowed to retain this

property, we should have what we think would be the deplorable spectacle of an agent who had been sued by the principal but had succeeded in defeating that suit, although the matter was still in appeal before a higher Court, obtaining execution for costs, availing himself of the process of execution to acquire, by improper means, the property of his principal for his own benefit at an absolutely inadequate price. Beyond the general objection to allowing such conduct as this to succeed, those parts of this man's examination, which have been read to us, furnish reason for thinking that on other grounds also he is not deserving of the aid of the Court to obtain an advantage over the lady, who was his principal. It is not necessary to go further into that question now, as the matter will be fully discussed on the appeal, which is pending. It appears to us that the Court below having before it the parties to the suit, was bound to restrain one of them from getting the advantage which he sought to take of the other. We think the sale should be set aside, and the property should continue under attachment so as to abide the result of the appeal.

Appeal allowed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Prinsep.

SONAKA CHOWDRAIN (DEFENDANT) *v.* BHOOBUNJOY SHAHA AND OTHERS (PLAINTIFFS).*

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May 15.

Insufficiency of Stamp—Penalty—Decision as to, not appealable as a Decree—Civil Procedure Code (Act VIII of 1859), *s.* 365—*Act X of* 1877, *s.* 588.

A decision of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court.

Nor can such a decision be said to be "an order as to a fine" within the meaning of s. 365 of Act VIII of 1859 (with which s. 588 of Act X of 1877, cl. 29, corresponds).

Section 365 is not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself.

* Appeal from Original Decree, No. 70 of 1878, against the decree of F. McLaughlin, Esq., Officiating Judge of Zilla Noakhally, dated the 17th of January 1878.