against two, in regard to the particular case in which it was given, we think the judgment of the Munsif in this case, refusing to admit parol evidence, was right, and that the judgment of the lower Appellate Court must be reversed with costs.

I would add also, that it appears to me very material to consider this section (92) of the Evidence Act with the provisions of the Registration Act. It is highly important, and clearly in accordance with the intention of the legislature in passing the Registration Act, that parties should be compelled to register the precise contract which they have made. It would be extremely inconvenient if parties should register as a bill-of-sale what afterwards turns out on the evidence of conduct to be merely a mortgage.

Another observation I would make in this case is this: it appears to me to be no answer to the direct provisions of a particular section of an enactment, to say that the enactment was described in terms as an enactment to consolidate, amend, and define the provisions of previously existing laws, and that the particular rule contended for is not to be found among the previously existing laws. It is sufficient if the provision relied upon is a part of the Act, whatever the description of the purposes of the Act may be.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice McDonell.

PARBUTTINATH ROY AND OTHERS (PLAINTIFFS) *v.* TEJOMOY BANERJI AND OTHERS (DEFENDANTS).*

1879 *May* 20.

Limitation—Beng. Act VIII of 1869, *s.* 30—*Act XV of* 1877, *s.* 19—*Suit on Bond—Parties.*

A suit for an account against an agent, employed to collect rents, is barred under Beng. Act VIII of 1869, s. 30, after the expiration of one year from the time of his resigning or leaving his agency.

* Appeal from Appellate Decree, No. 15 of 1879, against the decree of J. O'Kinealy, Esq., Judge of the 24-Parganas, dated the 24th of September 1878, reversing the decree of Baboo Krishna Mohun Mookerjee, Additional Subordinate Judge of the 24-Parganas, dated the 28th of February 1878.

1879

PARBUTTI-NATH ROY v. TEJOMOY BANERJI.

Notwithstanding 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, a suit cannot be brought upon an acknowledgment or account stated, signed by a person who has been an agent to collect rents, if his signature was not procured till more than a year after the determination of his agency.

A bond of indemnity was given to five persons to secure the fidelity of a Naib. The Naib was afterwards employed by three only out of the five obligees in the bond,—*held*, that on the Naib misconducting himself, the three obligees could not sue alone on the bond.

Semble—Neither in such case could the five obligees have sued, as the faithful service intended to be secured by the bond was service to five persons and not to three only.

THE plaintiffs in this case sued to recover from the first defendant the sum of Rs. 3,676-2-13-13 due to them from him upon an account stated, signed by him on the 32nd of Joisto 1283 (13th of June 1876), and to render the second and third defendants liable on a contract of indemnity executed by them on the 14th of Pous 1273 (28th of December 1866).

The facts were as follows:—In the year 1273 (1866) five persons—Kasinath, Debnath, Parbuttinath, Umanath and Shamanath Roy Chowdhry—were the joint owners of certain estates in the 24-Parganas, and the defendant Tejomoy Banerji, who was desirous of entering into their service as a Naib or collector, induced the other two defendants Shamachurn Banerji, and Norohori Bhuttacharji, to execute a bond of indemnity in favor of the plaintiffs, by which they became securities for the first defendant. Tejomoy did not at once get the appointment, and Umanath and Kasinath, two of the five obligees, appointed separate persons to collect their shares of the rents.

On the 18th of Bhadro 1274 (2nd of September 1867), Tejomoy was appointed by Parbuttinath, Debnath, and Shamanath, three only of the five persons above referred to, to collect their shares only. No further or other bond was on this occasion taken from the second and third defendants. Matters thus continued up to the year 1277 (1870), when Tejomoy, whose conduct in submitting papers and accounting for the rents had been far from satisfactory, was called

upon by his three employers, Parbuttinath, Debnath, and Shamanath, to give a bond binding himself to furnish accounts or to pay Rs. 3,000; and, accordingly, on the 15th of Shrabun 1277 (30th of July 1870), he executed a bond to that effect. He was not, however, then discharged, but permitted to continue in the service of his employers till Bhadro 1281 (August or September 1874) when he resigned or abandoned his appointment, but, as the plaintiffs alleged, rendered no accounts. No action was then taken against him, and, under Beng. Act VIII of 1869, s. 30, the claim against him as an agent became barred in Bhadro 1282 (August and September 1875). His liability under the bond of 30th July 1870 continued in force, and would not be barred till the 30th July 1876. Subsequently the plaintiffs in this suit, who were Parbuttinath and the representatives of Debnath and Shamanath, sent for him, and on his coming, his accounts were adjusted, and a balance of Rs. 3,676-2-13-13 was found to be due from him, and, as the plaintiffs alleged, on the 32nd of Joisto 1283 (13th of June 1876), he signed the following statement of account:—"The amount of 3,676-2-13-13 exactly became due."

The plaintiffs, having failed to obtain payment of this sum either from Tejomoy or from his sureties, instituted the present suit on the 5th October 1877.

The defendant Tejomoy pleaded :—

1*st.*—That the suit was barred as not having been brought within one year after Bhadro 1281 (August or September 1874), when, as the plaintiffs admitted, he had ceased to be in their service;

2*nd.*—That he had resigned his post of Naib under the plaintiffs in Bhadro 1281 (August or September 1874), and had then fully accounted to them, and received a receipt in full signed by them, which he filed;

3*rd.*—That he had not signed the acknowledgment or statement of account, of the 13th June 1876, relied upon by the plaintiffs, and

4*th.*—That even if he had signed it, it would not save limitation, as the plaintiffs' right to sue him as an agent had become barred

1879

PARBUTTINATH ROY v. TEJOMOY BANERJI.

in August or September 1875, and the alleged acknowledgment or statement of account was not stated to have been signed till the 13th of June 1876.

The defendant Shamachurn Banerji admitted the execution of the indemnity-bond of the 14th Pous 1273 (20th December 1866), but pleaded that that bond was in favor of five persons, two of whom were not represented and did not appear in the suit.

The defendant Norohori Bhuttacharji did not appear.

The Court of first instance found upon the evidence that the second and third pleas of the defendant Tejomoy were false, that is to say, that he had not received a receipt in full from the plaintiffs in 1281 (1874), and that he had signed the statement of account on the 13th of June 1876, and held that the fact that more than a year had elapsed from September 1874 to June 1876 was immaterial, as, on the 13th of June 1876, the defendant Tejomoy was still liable on his bond, which was not barred till the 30th of July 1876.

The plea of the defendant Shamachurn Banerji was also disallowed, and the case decreed with costs against all the defendants.

Upon appeal the lower Appellate Court concurred with the findings of the Court of first instance on the facts, but disagreed with its conclusions as to the indemnity-bond. It observed that—"it was not given to the plaintiffs alone, but to them and others, nor was it given on account of the service actually performed by Tejomoy. The bond was for service under five, the actual service was under three, and commenced in the ensuing year." The lower Court of Appeal accordingly set aside the decree against the defendant Shama Churn Banerji, and also, under s. 544 of Act X of 1877, against Norohori Bhuttacharji, who had not appeared. As to the defendant Tejomoy, the lower Court also dismissed the suit, holding that the money demand was barred in Bhadro 1282 (September 1875) and that no subsequent mere acknowledgment would place the plaintiff's right higher than a moral obligation.

Against this decision the plaintiff appealed to the High Court.

Baboo *Mohini Mohun Roy* and Baboo *Bhowany Churn Dutt* for the appellants.

Baboo *Rash Behary Ghose* and Baboo *Bungshi Dhur Sen* for the respondents.

The judgment of the Court was delivered by

JACKSON, J. (McDONELL, J., concurring):—It appears to us that this suit was really barred. It was a suit brought by the plaintiffs against their agent and his sureties, on the ground that the defendant No. 1 had been appointed Naib for the purpose of collecting the plaintiffs' share of the rent of Pargana Ballia and others, the duties of which office he continued to perform until Bhadro 1281 (August or September 1874); that he then gave up his post and went away; that being afterwards sent for he came to the plaintiffs in Joisto 1283 (June 1876), when a settlement of account was arrived at, which was signed by the defendant. There was also an allegation as to the defendant having collected and received monies on other accounts, but nothing of that sort appears to have been found in the Courts below.

As to the liability of the sureties, the lower Appellate Court has found that the plaintiffs have no case because their undertaking was in respect of service under five persons, and the service was actually not under those five but under three of them. I should also be inclined to hold that the liability sought to be enforced against the sureties in this case is far too wide, too vague in its character, to be enforced by a Court of law, because it purported not to be in respect of any particular service, but in expectation of any kind of employ at any time.

But the more difficult question that we have to consider is, whether the liability of the defendant could be enforced. The view which the Subordinate Judge took, was, that this was not a suit under s. 30 of the Rent Law, but a suit to recover money upon an account stated.

It appears to us clear that the present suit was a suit for the recovery of money in the hands of an agent, and that it was one which the plaintiffs were bound to bring under the provisions

1879

PARBUTTINATH ROY v. TRJOMOY BANERJI.

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.

1879
April 1.

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 Mehu Lall Chatterjee, Subordinate Judge, Moorshedabad, dated the 30th of August 1878.