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thoou which would afford a suitable remedy, or which would preclude such an action as the present.

Their Lordships think the decree of the Judge of Patna is incorrect in declaring that the plaintiffs are entitled to realize the decretal money by auction-sale of Mouza Nandan; and that it ought to be amended by striking out that declaration. In the view they take of the case, the decree should be a simple money-decree. On the whole case, they agree with the Courts below, though not altogether on the same grounds, that the plaintiffs are entitled to succeed in the action; and they will humbly advise Her Majesty, subject to the amendment above indicated, to affirm the decrees appealed from. The appellant must pay the costs of the appeal.

Appeal dismissed with costs.

Solicitor for the appellant: Mr. T. L. Wilson.

Solicitors for the respondents: Messrs. Barrow & Rogers

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Field.

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July 4.

DEGAMBER MOZUMDAR AND ANOTHER (DEFENDANTS) v. KALLYNATH ROY (PLAINTIFF).*

Principal and Agent—Form of Suit for Account—Procedure on taking Accounts—Misjoinder—Limitation—Notice of Objections to Decree by Respondent—Accounts of Joint Property—Civil Procedure Code (Act X of 1877), ss. 250, 395, and 396; sched. iv, Form 157—Limitation Act (XV of 1877), s. 5.

In a suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make

Appeal from Appellate Decrees, Nos. 447 and 448 of 1880, against the decree of R. F. Rampini, Esq., Officiating Judge of Dacca, dated the 10th of December 1879, modifying the decree of Baboo Gungachurn Sircar, Subordinate Judge of that district, dated the 20th of November 1878.

an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and Form 157 of sched. iv to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers or other documents which have come into the hands of the agent in the course of his employment.

In a suit for an account against *A* and *B* as agents, the plaintiff asked for an account as against *A* from 1265 (1858) to 1283 (1876), and as against *B* from 1281 (1874) to 1283 (1876).

Held, that there had been no misjoinder.

The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given, is not a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period.

Forms of keeping accounts of joint property in the Mofussil considered.

IN these two suits the plaintiffs, who were co-sharers in certain properties, sued the defendants, Degamber Mozumdar and Mohima Chandra Sen, as agents, and they also joined as defendants their other co-sharers, alleging against them fraud and collusion with the abovenamed defendants. As against Degamber Mozumdar and Mohima Chandra Sen the suits were for monies received by them as agents and for an account, as against Degamber Mozumdar from 1265 (1858) to Pous 1283 (December 1876), and as against Mohima Chandra Sen from Kartick 1281 (October 1874) to Pous 1283 (Dec. 1876). The employment of the defendant Degamber Mozumdar commenced in 1265 (1858), and that of the defendant Mohima Chandra Sen in 1281 (1874). The Subordinate Judge gave the plaintiff a decree for accounts for 1282 (1875) and up to Pous 1283 (December 1876). The District Judge modified this decree and directed that the defendant Degamber Mozumdar should render the accounts directed from 1280 (1873) up to Pous 1283 (December 1876), and that the defendant Mohima Chandra Sen should furnish accounts from Kartick 1280 (Oct. 1873) to Pous 1283 (December 1876.)

Against this decree these defendants appealed, contending among other things that there had been a misjoinder, inasmuch

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as the accounts asked for from Degamber extended over a period of more than ten years, while the account asked for from Mohima only extended over a period of two years out of that period. The plaintiff filed a cross-appeal within seven days of the time fixed for hearing the appeal, and put in a petition asking that the cross-appeal might be admitted though filed after time.

Baboo Rash Behary Ghose and Baboo Jadub Chunder Seal,
 for the appellants.

Mr. Bell, *Baboo Kasi Kant Sen,* and *Baboo Jogesh Chunder Roy* for the respondent.

The judgment of the Court (PRINSEP and FIELD, JJ.) was delivered by

FIELD, J.—These two appeals will be governed by the same judgment.

In No. 447, Kallynath Roy is the plaintiff, and in No. 448, Futtick Chuunder Roy is the plaintiff. These two plaintiffs are co-sharers in certain properties: and they have brought these suits against Degamber Mozumdar and Mohima Chandra Sen, who, they allege, were gomashitas, or agents, employed on their behalf in making zemindari collections in the manner customary in the mofussil. The object of these suits is to obtain accounts from these agents; but according to an erroneous practice too common in the mofussil, the plaintiffs have asked a certain amount as damages if those accounts are not rendered.

In a number of cases which have recently been before this Court, the practice which ought to be followed in this class of cases has been explained. The plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree, declaring that he is so liable, and directing him to file an account in Court within a fixed period.

If the defendant refuses or omits to obey the order contained in this decree, such decree may be enforced under s. 260 of the

Code of Civil Procedure by imprisonment or by attachment of property, or by both. If he obey and file the account, then, as soon as it has been filed, the plaintiff should be allowed a reasonable time to examine this account, and (if so advised) to file objections to its correctness or the correctness of particular items therein. If the items of objection are few in number, they can probably be disposed of in open Court. If, however, the objections are numerous, and, in order to dispose of them, it is necessary to enter upon complicated enquiries, the proper course to pursue is, under the provisions of the Code of Civil Procedure, to appoint an officer to take and adjust the accounts and make his report to the Court. See ss. 394 and 395 of the Code of Civil Procedure, and Form No. 157 appended to the Code. This course may properly be pursued in the first instance, if the account required is not of such a nature as to render it probable that there will be no difficulty in dealing with the disputed items in Court. As soon as the account has been properly taken, the Court must determine the amount due to the plaintiff thereupon; and the final decree should be for the payment of this amount; and also (if necessary) for the delivery of any papers, vouchers or other documents which have come into the hands of the agents in the course of his employment. In the present case, and upon the remand which we are about to direct, the course above indicated should be followed.

The plaintiffs ask that Degumber Mozumdar be directed to furnish an account from 1265 to Pous 1283, and that Mohima Chandra Sen be directed to furnish an account from Kartick 1281 to Pous 1283.

Now, the first ground of objection raised before us on this appeal is, that there is a misjoinder, inasmuch as an account is asked from Degumber Mozumdar for a period of nearly twenty years, and from Mohima Chandra Sen for a period of two years only out of that period; and it is urged that this double claim against persons not liable to account for the same period ought not to have been made in the same plaint.

It appears to us, on consideration, that this is an argument which ought not to prevail. Degumber Mozumdar is bound to render an account for a period of nearly twenty years, during

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which he has been employed continuously in the same manner and upon the same duties, and the account which he is liable to render is a connected and continuous account. We do not think that merely because Mohima Chandra Sen is (as has been found by the lower Courts) jointly liable to account for the last two years of this period, separate suits ought to have been instituted against these two agents.

The next point urged is, that defendant No. 2 has been erroneously declared liable to account from Kartick 1280. It is admitted on the other side that this is a mistake on the part of the District Judge; and that, so far as Mohima Chandra Sen is concerned, his liability to account must date from Kartick 1281.

It will be convenient here to deal with the objection which has been taken by way of cross-appeal. That objection is, that Degamber Mozumdar ought to have been made liable to account for the year 1265. Now, the Subordinate Judge was of opinion that Degamber Mozumdar was not liable to render accounts for any period antecedent to the time when, according to his finding, the co-sharers began to have separate collections. He says in his judgment:—"It appears from the evidence of the witnesses examined on both sides, that collections were all along made jointly on the part of all the maliks until they quarrelled with each other, an event which, according to the defendants' witness No. 1, who is a respectable person, took place about three or four years ago. Now, for the time during which collections were made jointly for all the maliks, the agents might be called upon to render a joint account for all the sharers; but I do not think that any of the co-sharers can demand a separate account for the said period in respect of his share only, when there is no special agreement to that effect." Now, here the Subordinate Judge is clearly wrong. Degamber Mozumdar was employed as an agent on behalf of a number of co-sharers, and he was bound to render an account to each one of these co-sharers. In the case of joint collections, the account which he ought to have rendered to each co-sharer would properly take the form of a copy of the account kept on behalf of the joint co-sharers. That each co-sharer is entitled to a copy of this joint account, there can be no doubt.

The case then went before the District Judge, and the District Judge so far differed from the Subordinate Judge, that he was of opinion that the separate collection of the rent commenced in 1280, and he modified the decree of the Subordinate Judge by declaring Degamber Mozumdar liable to account from 1280 instead of 1282, during which latter year the Subordinate Judge was of opinion that the separate collections commenced, and from which year, therefore, he was of opinion that the plaintiffs were entitled to have an account from the defendants.

Now, so far as regards the period antecedent to 1280, we think that we cannot, on the present occasion, interfere with the judgments of the lower Courts. A cross-objection to the decree of the District Judge, in so far as regards the period between 1265 and 1280, was filed; but as this cross-objection was not put in seven days before the date fixed for the hearing of the appeal, it could not, according to a number of decisions of this Court, be admitted. A petition was further presented to a Division Bench asking that, under the circumstances, if the cross-objection could not be allowed as being out of time, it might be treated as a substantive separate appeal, and admitted, though long after time. Having regard to the number of cases decided upon the amended s. 561 of the Code, we think that we cannot allow this petition. The seven days within which a notice must be given according to the provisions of the amended Code, is not, we think, a period to which the provisions of paragraph 2 of s. 5 of the Limitation Act can be extended as the period of limitation; for this application is not prescribed by the Limitation Act, but by the Act which amended the Code. The words "period of limitation prescribed therefor" in this paragraph must clearly be read with s. 4 of the Limitation Act. It was decided before the last vacation by a Division Bench of this Court, after argument and careful consideration, that the provisions of the amended Code do not allow any discretion to extend the period of seven days. The petition, asking that the cross-objection be accepted as a separate appeal, was not filed until the 14th January 1881; and under these circumstances we are unable to say that sufficient cause has been made out to our satisfaction for not presenting this substantive separate appeal

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at an earlier date. We must, therefore, reject this petition; and confine our consideration of the case to the period commencing with the Bengali year 1280 and ending with Pous 1283. Now, there can be no doubt that Degamber Mozumdar is bound to render an account for the whole of this period, and Mohima Chandra Sen is bound to render an account for the period between Kartick 1281 and Pous 1283. Then, with regard to what both the lower Courts have said about separate collections, it is not clear to us what the nature of those separate collections was. It has not been suggested to us that there is any evidence upon the record to show that all the ryots agreed to pay their rent to the co-sharers separately,—*i.e.*, in separate shares. If this had been so, there would, as a matter of course, have been separate accounts, in each of which would have been entered the payments made by each ryot in respect of the separate share. There are several forms of keeping the accounts of joint property usual in the mofussil. Shareholders may agree to have a separate account of the collections kept without requiring the ryots to assent to pay their shares of the rent separately. In a case of this kind every rupee of the rent that is paid into the zemindar's sherishta is divided, and the share to which each shareholder is entitled separately is entered in his separate account. There is also a third practice in addition to the two above noticed. All the accounts are kept as a single account of receipts, all rents paid being entered in this account; and a division subsequently made of the total sum of the collections after allowing for collection expenses. The lower Courts have not at all indicated which of these courses they find to have been pursued in the present case, or from what date a change was made in the mode of keeping the accounts, or what the nature of that change was. We think that these cases must be remanded, in order that the District Judge may come to a distinct finding as to the date from which the so-called separate collections were made, and as to what arrangements were made or instructions given as to the form in which the separate accounts were to be kept. We may point out that so long as the gomashtha remained a joint servant of all the co-sharers, he was bound, as we have already said, to

give to each co-sharer a copy of the joint accounts; but when this arrangement was altered, the account to which the plaintiffs are entitled would depend upon the nature of the altered instructions given to the defendants as to the keeping of separate accounts. The District Judge must come to a distinct finding as to the form of separate account which, after the change from joint to separate collections, the defendants were bound to keep by express direction or by custom or by implied understanding. The result will be, that, as to the period commencing with the Bengali year 1280 and terminating with the date upon which the new form of accounts came into effect, a joint account will be taken, and a copy of that account given to each of the plaintiffs. Allowance will be made for the sums already paid over to the plaintiff; and the District Judge will find the amount which remains due to each of the plaintiffs upon this joint account. Then as to the period commencing with the date on which the new form of accounts came into effect, and terminating with Pous 1283, a separate account must be taken in respect of each of the plaintiffs, allowance being made for any sums paid over to them and for the reasonable expenses of collections, and the District Judge will here also find what amount, if any, is due to each of the plaintiffs. With these instructions the two appeals will be sent back to the District Judge. We direct that the costs of this hearing do abide the ultimate result.

When the above judgment was delivered, Mr. Bell for the respondents represented that his clients are willing to accept copies of the accounts which the defendants say they have already delivered to Monmohun Roy, and if the defendants file in Court true copies of the accounts within a reasonable time to be fixed by the District Judge, the procedure above laid down can be applied to those copies.

Cases remanded.

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