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that seems to us fit. The observation of the Judicial Committee in *Bhugwandeen Doobey* v. *Myna Baee* (1) supports this view. As we have re-heard the case with reference to the question of share, I am of opinion that we are in a position to make the final decree without another hearing. Our decree, therefore, should be altered as directed above. The petitioners are entitled to recover costs of this hearing, which I would assess at Rs. 200.

MACLEAN, J.—I find with regret that I am of a different opinion from my learned and more experienced colleague upon one of the points raised in this application,—namely, the first point discussed in the judgment just read.

On this question, however, our former decision must stand for the present under s. 628 of the Code.

On the other questions I do not differ from my colleague, and I think that we are not precluded from dealing with the case in part or as a whole by anything in s. 630, it being within our discretion to define the extent to which the review should be carried; see *Bhugwandeen Doobey* v. *Myna Baee* (1).

Decree varied.

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

BEER CHUNDER MANICKYA (PLAINTIFF) *v.* HURRO CHUNDER BURMON (DEFENDANT).* 1882 *July* 12.

Limitation—Rent Law (Beng. Act VIII of 1869), *s.* 30—*Special Agreement.*

The defendant was tehsildar of one of the plaintiff's zemindaris, and after his dismissal on the 24th of August 1876, he submitted an account, which was found to be incorrect, and time was given to him to make good certain items on his executing an ikrar, promising to pay whatever balance should be found due from him to the plaintiff. In a suit brought on the 28th of October 1878 to recover the balance found on inquiry to be due,—*held*, that s. 30 of Act VIII of 1869 had no application, the special agreement taking the case

* Appeal from Appellate Decree, No. 1784 of 1880, against the decree of W. F. Meres, Esq., Officiating Judge of Tipperah, dated the 11th June 1880, affirming the decree of Baboo Kalidas Dutt, Second Subordinate Judge of that district, dated the 9th of May 1879.

(1) 11 Moore's I. A. 499.

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out of the scope of that section, and therefore the suit was not barred by reason of having been brought more than one year after the defendant's dismissal.

Baboo *Kali Mohun Dass* and Baboo *Durga Mohun Dass* for the appellant.

Munshi *Serajul Islam* and Baboo *Chunder Madhub Ghose* for the respondent.

THE facts of this case are sufficiently stated in the judgment.

The judgment of the Court (GARTH, C. J., and BOSE, J.) was delivered by

GARTH, C. J.—The circumstances under which this case arose are these:—

The plaintiff Moharaja appointed the defendant as tehsildar in one of his zemindaries on the 22nd Aghran 1283 T. S. The defendant worked as such up to the 9th Bhadur 1285 T. S., when he was dismissed. The defendant, on the 14th Bysack 1286 T. S., submitted an account of the collections and disbursements during the period of his service, but the Moharaja's officers took exception to several of the items, and made out a balance of Rs. 2,578 annas 15 pie 6 against him. The Moharaja was prepared to sue the defendant for recovery of this balance, but the defendant asked for time in order to enable him to make good the items by producing vouchers, as also by mofussil inquiry. The Moharaja consented to give time to the defendant upon his executing an ikrar, with a promise to pay whatever balance would be found due from him upon such inquiry. The defendant accordingly gave a registered ikrar on the 23rd Chyet 1286 T. S., which (amongst other things) provided that he, the defendant, "would furnish lowazima papers in support of his said account, and would wait on the Moharaja's officers in the mofussil while making the inquiry, and come to an adjustment of his account within six months from the date of the ikrar; and would pay, without objection, whatever money should be found

due from him upon such mofussil inquiry and investigation by the Moharaja's agent within three months from the date of its ascertainment." An inquiry was subsequently made by the Moharaja's agent in the presence of the defendant, when, on the 25th Ashar 1287 T. S., a sum of Rs. 1,870 annas 7 pie 6 was found to be due from him. The Moharaja accordingly brought this suit on the 28th October 1878 for recovery of the said amount.

Both the lower Courts have applied s. 30 of the Rent Act to the case, and have held that the suit is barred, because more than one year has elapsed since the date of the defendant's dismissal, as also since the date when the misappropriation by the defendant was first detected.

We are clearly of opinion that the suit is not governed by s. 30 of the Rent Law. It is not a suit brought under ordinary circumstances for money in the hands of an agent, or for the delivery of accounts or papers. It is brought upon a special agreement, by which it was agreed on both sides that, for the purpose of ascertaining the correct amount due from the defendant to the plaintiff, an investigation was to take place and certain accounts and other papers were to be supplied by the defendant, in order to enable the plaintiff's agent to arrive at the truth, and a certain time was to be given to the defendant to pay the money, after this investigation had taken place.

A special agreement of this kind takes the case entirely out of the scope of s. 30. It would be a positive fraud upon the plaintiff, who has behaved very fairly in the matter, to allow him to be defeated by limitation under such circumstances; and it was nothing short of a fraud for the defendant to take such an objection.

Had a promissory note been given by the defendant for payment of the amount due at the end of two years, that clearly would have taken the case out of s. 30, and here we have a specific agreement for good consideration on both sides, which has the same effect.

If agreements such as these are virtually to be disregarded, the Rent Law would indeed be made a means of the grossest fraud and injustice.

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The case will be accordingly remanded to the first Court for re-trial on the merits. And as the defendant has set up the plea of limitation in fraud of his own arrangement, he must pay the costs of all the proceedings as far as they have gone.

The costs of the new trial will, of course, be in the discretion of the Subordinate Judge.

Case remanded.

Before Mr. Justice Tottenham and Mr. Justice Bose.

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NIHAL CHAND, *alias* CHUTTO LAL, AND OTHERS (DECREE-HOLDERS) *v.* RAMESHARI DASSEE (JUDGMENT-DEBTOR).*

Execution of Decree—Stay of Execution—Appeal from Order—Civil Procedure Code (Act X of 1877), ss. 243, 244, 588.

A decree-holder having attached the property of his judgment-debtor in execution, the latter applied for a stay of execution until the decision of a pending suit brought by him against the judgment-creditor. The Court allowed the application, continuing the attachment on the property, and struck the execution-case off the file. The decree-holder applied to the High Court.

Held, that no appeal lay.

THE facts of this case are fully set out in the judgment of the Court.

Baboo *Tarruck Nath Sen* for the appellants.

Baboo *Bama Churn Banerjee* for the respondent.

The following judgment of the Court (TOTTENHAM and BOSE, JJ.) was delivered by

TOTTENHAM, J.—The order against which this appeal has been preferred purports to have been passed under s. 243 of the Code of Civil Procedure, on the application of the judgment-debtor, on the ground that the judgment-debtor had brought a suit against the present decree-holders and others. The Court, in its discretion, stayed the execution of the present

* Appeal from Original Order, No. 45 of 1882, against the order of Baboo P. N. Banerjee, Officiating Subordinate Judge of Burdwan, dated the 16th January 1882.