

(1879) 05 CAL CK 0008

Calcutta High Court

Case No: None

Parbuttinath Roy and
Others

APPELLANT

Vs

Tejomoy Banerji and
Others

RESPONDENT

Date of Decision: May 20, 1879

Acts Referred:

- Limitation Act, 1877 - Section 19

Citation: (1880) ILR (Cal) 303

Hon'ble Judges: McDonell, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

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, 1864); 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.

2. As to the liability of the sureties, the lower Appellate Court has found that the plaintiff's 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.

3. 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 u/s 30 of the Rent Law, but a suit to recover money upon an account stated.

4. 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 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 Section 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 Section 30 of the Rent Act, provided that upon such promise a suit could be maintained with reference to Clause 3, Section 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 Section 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.