proving the fraud, and thereby displacing the plaintiff's title rests on the defendants. The construction which it is sought to put on the Limitation Act would tend to defeat the policy of the Act and to disturb rather than quiet possession (see remarks of JARDINE, J., in *Hargovandas Lakhmidas* v. *Bajibhai Jijibhai*(1)). In our opinion the defence which the defendants raise is not affected by the Act of Limitation and therefore the appeal must be remanded for trial on the merits. We must point out that the acts of the zemindar after the execution of the lease to the defendants can have no material bearing on the case. The question is whether after having notice of the fraud and before executing that lease, he elected to avoid the lease to the plaintiff or not to avoid it. If he made no election, the right to rescind remained to him (*Clough* v. *London and North-Western Railway Company*(2) and *The Lindsay Petroleum Company* v. *Hurd*(3). The decree must be reversed and the appeal remanded. Costs to abide result.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

BRANSON (PLAINTIFF), APPELLANT,

v.

APPASAMI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1894. Feb. 22, 23.

Infant—Minor—Next friend—Solicitor's costs for proceedings undertaken on the next friend's instructions—Repudiation of the proceedings by the minor on attaining majority.

A solicitor cannot recover the costs of litigation incurred by the next friend of a minor on his behalf from the *quondam* minor, who, on coming of age, repudiates the proceedings, there being no relation of contract between them.

Assuming that the legal proceedings were in the nature of necessaries, the next friend is the person responsible to the solicitor. *Watkins* v. *Dhunnoo Baboo* (4) distinguished.

APPEAL against the decree of Mr. Justice Wilkinson sitting on the original side of the High Court in civil suit No. 126 of 1891.

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(1) I L.R., 14 Bom., 222. (2) L.R., 7 Ex., 35. (3) L.R., 5 P.C., 221.
(4) I.L.R., 7 Calc., 140.

* Original Special Appeal No. 16 of 1893.

BRANSON v. APPASAMI.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the Appellate Court.

The *Advocate-General* (Honorable Mr. *Spring Branson*) for appellant.

Mr. *K. Brown* for respondents.

JUDGMENT.—This is an action by a solicitor to recover from the defendant costs incurred by the next friend of the defendant in litigation undertaken on his behalf. The principal suit thus prosecuted in the interests of the defendant was instituted in 1882, and was still pending in 1887, when, in the month of November, the defendant came of age. In January 1888 the defendant having resolved to abandon the suit, caused an application to be made by other solicitors for the dismissal of the suit. The learned Judge, who tried the case now under appeal, found with regard to the first issue that it was not shown that the proceedings undertaken on the defendant's behalf were necessary and proper for the protection of his interest, and it was argued before us that this finding was contrary to the weight of evidence. In the view taken by us it is not necessary to discuss this question, for assuming that the circumstances relating to the defendants' estate were such as to justify and require the proceedings taken by the next friend, we are of opinion that the present action at the suit of the solicitor against the defendant cannot be maintained. It must be observed that on question arises as to the rights of the next friend against the *quondam* minor plaintiff, nor as to the right of the solicitor against the next friend. In the order made on the application of the present respondent dismissing the suit of 1883, provision was made in accordance with the terms of section 452 of the Civil Procedure Code for the payment by him of the costs which might have been paid by his next friend. It is not necessary for us to say whether under any circumstances the next friend might, notwithstanding the language of that section, be entitled to any further rights against the *quondam* minor. On the other hand, as regards the right of the solicitor against the next friend, there can be no doubt, and he has in fact obtained a decree against him in the present suit. Not contented with that, he also asks for relief against the *quondam* minor. We are at a loss to understand on what principle a person who has contracted with A can have a right of action against B when it appears that, at the time of the contract, B was not competent to appoint an agent; and, moreover,

that immediately on attaining majority, he has repudiated the acts of A. The general rule is that "liabilities are not to be forced on "a man behind his back" (per Bowen, L.J., in *Falcke* v. *Scottish Imperial Insurance Company*(1), and the present case cannot be brought within the case provided for by section 70 of the Contract Act, to which section, indeed, no reference was made in the argument. It was contended that the services rendered by the plaintiff to the minor were in the nature of necessaries and that, therefore, the action would lie, but there is really no analogy between the cases, for here there was the next friend responsible to the plaintiff and from him, if necessary, funds might have been obtained. The fact that he was unwilling or unable to supply funds is no reason for giving the plaintiff a supplementary right of action against another person. The decision in *Watkins* v. *Dhunnoo Baboo*(2) has no bearing on the present case, for there the defendant was still a minor, and there had been no repudiation of the acts done for the protection of his estate. Seeing that there was not, and in point of law could not be, any relation of contract between the plaintiff and the defendant, and that there was such relation between the plaintiff and another person, and considering moreover that the services in respect of which the act is brought were not accepted, but repudiated by the defendant on his attaining majority, we are of opinion that no obligation to pay the plaintiff in respect of those services has been established. In addition it appears that any cause of action which the plaintiff might have had is barred by limitation. As has been shown notice of the defendants' resolve to abandon the litigation was given in January 1888, and the present suit was not brought till April 1891. By that notice in our judgment there was effected a determination of the suit or business within the meaning of article 84 of the schedule to the Limitation Act. It is immaterial that the order passed on the defendants' application was not issued till a later date. For these reasons we think the suit was rightly dismissed and we dismiss the appeal with costs.

Grant, attorney for plaintiff.

Champion & Biligiri, attorneys for defendants.

(1) L.R., 34 Ch. D., 248. (2) I.L.R., 7 Calc., 140.