teen is correct in holding that there was an irregularity in the non-statement of the amount of revenue in the proclamation which could be relied on upon appeal, and that the appellant had sustained substantial injury by reason of that irregularity.

Their Lordships think that it was too late for the applicant to make the objection; and even if it were not too late for him to make the objection before the High Court, there was no evidence to justify the High Court in arriving at the conclusion that there was inadequacy of price occasioned by the non-statement of the revenue in the sale proclamation.

Under these circumstances, their Lordships will humbly advise Her Majesty to reverse the decision of the High Court, and to affirm the decision of the first Judge. They think that the respondents must pay the costs of this appeal and the costs in the High Court.

Appeal allowed.

Solicitors for the appellants: Messrs. *Lawford, Waterhouse* and *Lawford.*

FULL BENCH REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep, and Mr. Justice Wilson.

RUDRA KANT SURMA SIRCAR AND OTHERS (DEFENDANTS) *v.* NOBO KISHORE SURMA BISWAS (PLAINTIFF).

1883 *March* 9.

SAMOD ALI, DEFENDANT *v.* MAHOMED KASSIM AND OTHERS (PLAINTIFFS.)*

Limitation (Act XV of 1877), s. 7—Minority—Right to Sue—Personal exemption—Assignment by Minor.

Under s. 7 of the Limitation Act, a minor has, in respect of a cause of action accruing during his minority, a right to sue at any time within three years of attaining his majority; but if during his minority, or if after attaining his majority and within three years thereof, such person assigns all his right and interests to a third party, who is *sui juris*, the latter cannot claim the exemptions accorded to the minor by s. 7 of the

* Full Bench Reference made by Mr. Justice Wilson and Mr. Justice Field, dated the 6th September 1882, in appeals from Appellate Decrees Nos. 434 and 1927 of 1881.

1883

RUDRA KANT SURMA SIRCAR v. NOBO KISHORE SURMA BISWAS.

Limitation Act, but is subject to the ordinary law of limitation, governing suits in which relief of the same nature is claimed.

THESE cases were referred to a Full Bench by Wilson and Field, JJ., on the 6th of September. In addition to the facts stated it may be noticed that in No. 434 of 1881 the sale to the plaintiff was a private sale, and the vendor Rajoni Nath Chuckerbutty was made a party-defendant to the suit. In No. 1927 of 1881 the sale to the plaintiffs was made in execution of a money decree against the minors In this suit also the minors were made defendants.

The reference in both cases was as follows :—

"*No.* 434 *of* 1881.—The question raised upon this appeal is a very short one, but it is important.

"Rajoni Nath Chuckerbutty, a minor, was entitled to the lands in suit. During his minority he was dispossessed. On attaining his majority, he assigned his interest to the plaintiff, and this suit was brought within three years of Rajoni Nath's coming of age, but more than twelve years after the dispossession. The question is whether the suit is barred by limitation.

"Had the question been wholly a new one, we should have been prepared to hold that it is not. By s. 7 of the Limitation Act (XV of 1877): 'If a person entitled to institute a suit...be, at the time from which the period of limitation is to be reckoned, a minor...he may institute the suit within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor." "Nothing in this section... shall be deemed to extend for more than three years from the cessation of the disability...the period within which any suit must be instituted.'

"By s. 29, 'at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.'

"At the time when Rajoni Nath came of age, he had a good title to his property and a valid right to sue for it, which right of suit had three years still to run. We do not see why this right of property, with the right of suit incident to it, should not be assignable as other such rights are.

"If this view be not correct, and the right to sue after attaining

majority is limited to the person attaining majority, very incongruous results might follow. For example, if he died the day after he came of age, his right of suit, and, with it, his right of property must die with him: his representatives could not sue. Whereas if he died the day before coming of age, his representatives would have three years to sue.

"It was argued before us that the express mention in s. 7 of the right of the representatives to sue in case of death during disability, supported the view that the representatives took no benefit in any other case. But that does not seem to us sound reasoning. In the case of death under disability, it was necessary to prescribe a *new point of time* from which limitation was to run. And therefore special mention of the case was necessary.

"We were, however, referred to a case of *Mahomed Arsud Chowdhry* v. *Yakoob Ally* (1), in which Markby and Morris, JJ., took a different view of the construction of s. 7 of Act IX of 1871, holding that the privilege given to the person, who was under disability, was limited to himself personally and did not extend to his assignee.

"It is true that that case was decided upon an Act different from that now in force; but we are unable to find any material difference between the one Act and the other, so far as the present question is concerned. We, therefore, think it right to refer to a Full Bench the question whether this suit is barred by limitation.

"*No.* 1927 *of* 1881.—This case gives rise to a question very similar to one which we have already referred to a Full Bench in another case (No. 434 of 1881), with reference to s. 7 of the Limitation Act.

"In that case an infant attained his full age and then assigned his interest, and the assignee sued within three years of his assignor's majority.

"In this case the infants' interest was assigned while they were under age, and they have not attained majority. The assignee has sued within three years of the assignment.

It appears to us that the two cases must be decided upon the

(1) 15 B. L. R., 357.

1883

RUDRA KANT SURMA SIRCAR v. NOBO KISHORE SURMA BISWAS.

same principle; but as there is this difference between them, we think it right to refer this case also to the Full Bench.

Baboo *Grish Chunder Chowdhry* for the appellants in No. 434.

Baboo *Guru Dass Banerjee* and Baboo *Harendra Nath Mukerjee* for the respondent.

Baboo *Rash Behary Ghose* and Baboo *Aukil Chunder Sen* for the appellant in No. 1927.

Baboo *Sree Nath Banerjee* for the respondents.

The following judgments were delivered by the Full Bench.

No. 434 *of* 1881.

GARTH, C.J.—I think that the question referred to us should be answered in the affirmative.

It seems to me that the provisions in the Limitation Acts, which relieve minors and others under disability from the rules which are binding upon other people, *are purely personal exemptions*, and must be considered as attaching to the person only, and not to the property, or the title, of those who are under disability.

The only reason, I conceive, why such persons are not subjected to the ordinary rules of limitation, is that the law considers them incapable of forming a proper judgment as to bringing suits, or otherwise managing their own affairs.

But this reason does not apply to the property of such persons, or the titles by which they hold it; nor does there seem to be any good ground why the protection thus afforded to them should be extended to purchasers from them.

It may perhaps seem rather hard, that in a case like the present, a man purchasing property from a minor, which is not in the minor's possession, should at once be disabled from bringing a suit to recover it; but after all, this is only one of those difficulties, against which purchasers, if properly advised, can easily protect themselves. In this particular instance, the plaintiff, instead of taking from the minor an absolute transfer of property, which was not in his possession, might have entered into a contract for purchase, to be completed when the property had been recovered by suit.

1883

RUDRA KANT SURMA SIRCAR v. NOBO KISHORE SURMA BISWAS.

But, on the other hand, if the law were, as the plaintiff contends, that a purchaser when he buys property from a person under disability buys the exemption from limitation along with it, anomalies without end would be the consequence.

Thus a minor of three years old, who had been out of possession of property for two years, might transfer it to a person of full age. The purchaser, if the minor were an Englishman, would then have 18 years within which to bring his suit, although during all that time he would be under no disability and perfectly capable of managing his own affairs.

Again, a purchaser buying the estate of a lunatic, who continued to be a lunatic for 60 or 70 years after the sale, would, during the whole of that period, be freed from the law of limitation; and the person in possession of the property might, after the lapse of 60 or 70 years, be sued by the purchaser, or his heirs, who had no excuse during all that time for sleeping upon his rights.

I entirely agree with the learned Judges who decided the case of *Mahomed Arsud Chowdhry* v. *Yakoob Ally*, (1) with regard to the proper construction of s. 7 of the Limitation Act of 1871; and I think also, that the fact of the minor's representative in interest being expressly allowed by that section a certain time for bringing his suit, *in those cases where the minor dies during the disability*, seems clearly to indicate the intention of the Legislature, that in other cases the assignee of a minor is to have no special privilege.

But apart from what I consider to be the meaning and the reason of the Limitation Act, I think an extremely strong argument against the plaintiff's contention arises from the fact, that our attention was not called to a single authority (except the case just cited), in which any attempt has been made to extend the exemption which is given to persons under disability to purchasers from those persons. If there had been any ground for the plaintiff's contention, we should have expected points of doubt and difficulty to have constantly arisen from such a state of the law.

I think, therefore, that this appeal should be allowed; that the

(1) 15 B. L. R., 357.

1883

RUDRA KANT SURMA SIRCAR v. NOBO KISHORE SURMA BISWAS.

decision of the lower Appellate Court should be reversed, and the judgment of the Munsiff restored; and I also think that the defendant should have his costs in all the Courts.

No. 1927 *of* 1881.

I think that this case must be governed by the same principle as the other; and that consequently the judgments of the lower Courts should be set aside, and the plaintiff's suit dismissed with costs in all the Courts.

MITTER, J.—I am also of opinion that the question referred to us should be answered in the affirmative.

The express mention of the legal representatives in the third paragraph of s. 7 clearly indicates that the representatives in any other case do not take any benefit under it. But it has been said that the express mention of the legal representatives was made, because in the case of death under disability, it was necessary to prescribe a new point of time from which limitation was to run. But suppose the property of a person, who was under disability at the time when he became entitled to institute a suit in respect of it, be sold, and after the sale he dies, the provisions of the third paragraph of s. 7 would not apply to the purchaser. This being so, if the provisions of s. 7 would apply at all to the purchaser, his case must come under the first paragraph of the section qualified by the proviso.

But the language of the first paragraph cannot be made applicable to a case like the one supposed. It provides that the suit may be instituted within the same period after the disability has ceased as would otherwise have been allowed. But in the case supposed there could not be any *cessation of disability*, because the death took place when the disability was continuing.

It has been suggested that the disability in the section means the disability to sue, and it may be reasonably considered to have ceased on the sale of the property in respect of which the person under disability is entitled to bring a suit; and therefore in the case of a sale the time would run, under the first paragraph of the section, from the date of the sale.

But it seems to me that this construction is not borne out by the language used by the Legislature. The section speaks

of the cessation of the disability, *i.e.*, the disability of the person who was entitled to the property. By the sale of the property his disability does not come to an end. The *ability* of the purchaser to institute the suit is not the same thing as the cessation of the disability of the person whose property is sold. Then, again, suppose the person on whose behalf the property is purchased is himself a minor, or insane, or an idiot, the date of the sale in that case could not reasonably be considered as the cessation of the disability. It would be almost impossible to apply the language of paragraph 1 of the section to a case like that.

I entirely agree with the learned Judges who decided the case of *Mahomed Arsud Chowdhry* v. *Yakoob Ally* (1), in thinking that the privilege under s. 7 is purely a personal one. It has been said that this construction leads to anomalous results; because there may be cases in which the right in a particular property may be still vested in a minor, or insane, or an idiot, and yet such right would not be saleable. There is no incongruity in this, because the privilege granted is to the minor, insane, or the idiot himself, but not to a stranger, who may choose to become a purchaser. Then as to the creditors of such persons, they cannot complain of any hardship, because they cannot reasonably claim any higher rights than they could have claimed if their debtors had not been under any disability. Then again the existence of a right does not carry with it, necessarily, the power of alienation of such right. For example, the right to recover a contract debt is not extinguished after the lapse of the period of limitation prescribed for enforcing it (see s. 28 of the Limitation Act), still it is not alienable after the lapse of that time in the same sense in which the right of a minor, insane, or an idiot in a particular property, movable or immovable, in respect of which he is entitled to bring a suit is not alienable after the lapse of the ordinary period of limitation.

On the other hand, any other construction of the section would lead to incongruous results. For example, the case of a purchaser buying the estate of a lunatic, which has been

(1) 15 B. L. R. 357.

1883

RUDRA KANT SURMA SIRCAR v. NOBO KISHORE SURMA BISWAS.

put as an illustration by my Lord the Chief Justice, shows how inconvenient it would be if the construction put by the lower Appellate Court be adopted.

McDONELL, J.—I would answer in both these cases the question referred to us in the affirmative, and generally for the reasons given by the Chief Justice and Mr. Justice Mitter.

PRINSEP, J.—I agree in holding that under the terms of s. 7 of the Limitation Act XV of 1877, the privilege conferred is personal to minors, insanes, or idiots, and cannot be transferred *inter vivos*. I am not prepared to say whether this was intentional, or is due to an oversight on the part of the Legislature.

WILSON, J.—The questions raised in these cases are, to my mind, questions of considerable difficulty. I have felt grave doubts as to how they ought to be answered, and those doubts have not been removed. I agree that the construction placed upon the Act by the majority of the Court is one which it may fairly bear; but it involves serious anomalies and inconveniences. Thus, as appears from the first of the cases referred, a person who has just come of age may have property, and yet be practically unable to sell or dispose of it in any way. It appears from the second case that the same person, whether still under age or not, may have property, and the right to sue for it at any time for years to come; but that the property is wholly out of reach of his creditors.

If it be said that the difficulty may be removed by the purchaser's obtaining a power-of-attorney to sue in his vendor's name, there seem to be several answers. That is a mode of procedure not in ordinary use in this country. It would not be available for a purchaser in execution; and if it were, an infant cannot give a power-of-attorney. And if the infant did sell after he came of age with a power-of-attorney, the right of the purchaser would still be wholly dependent upon the life of his vendor. If the vendor died before suit, no suit could be brought. If he died pending the suit, it could not be revived, for the cause of action would not survive.

I am by no means sure that another construction of the Act is not equally legitimate, and one which would remove many of these anomalies. I am by no means sure that we ought not to hold that the person who is or has been under disability, having in him a right of property and a right to sue for that property, has a right to assign both, not because there are any words in the Act making them assignable, for there are none, but because property is by the general law ordinarily assignable, and, with it, the right of suit for its recovery. If we were so to hold and also to hold, as I think we well might, that an alienation of an infant's estate is, so far as that estate is concerned, a termination of the disability, we should, I think, get rid of most of the difficulties of the subject. The result would be, that a purchaser of an infant's estate, who purchased after the ordinary period for limitation had passed, would have three years from his purchase within which to sue; and a purchaser from one who had attained his full age would have three years from the date of majority.

I do not dissent from the judgment of the majority, but I feel great doubt about the matter.

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Field.

JUDOONATH GHOSE (PLAINTIFF) *v.* SCHOENE KILBURN & CO. (DEFENDANTS.*)

1883 *March* 15.

Landlord and Tenant—Dur-maurasi mokurari Tenure—Notice of Relinquishment—Surrender of Lease.

A tenure under a dur-maurasi mokurari lease of land, which is not let for agricultural purposes, cannot be put an end to by a mere relinquishment, on the part of the lessee, although after notice to the landlord.

Per FIELD, J.—The principle laid down in the case of *Heera Lall Pal* v.

* Appeal from Appellate Decree, No. 1866 of 1881, against the decree of Baboo Kedareshur Roy, Subordinate Judge of Hooghly, dated the 30th August 1881, affirming the decree of Baboo Huri Nath Roy, Officiating Munsiff of Serampore, dated the 29th December 1880.

(1) 20 W. R., 383.