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is a "debt" within the meaning of that word as used in s. 131 of the Transfer of Property Act, so as to make the transfer void without express notice.

What is intended by a debt under that section would appear to be an actionable claim, and not a claim which has already passed into a decree.

In the Code of Civil Procedure, which was passed in the same year as the Transfer of Property Act, we find a distinction generally between debts and decrees; and we further find special provisions in s. 232 regarding the transfer of decrees and the notice necessary to be given in such cases. Moreover s. 233 of the Code lays down the same rule in the case of decrees which is prescribed by s. 137 of the Transfer of Property Act in the case of debts.

For these reasons we hold that s. 131 of the Transfer of Property Act does not apply to decrees, and we dismiss this appeal with costs.

J. V. W.

*Appeal dismissed.*

*Before Mr. Justice Tottenham and Mr. Justice Norris.*

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 February 22.

RUDRA PROKASH MISSER (PETITIONER) v. BHOLA NATH MUKHERJEE, MANAGER OF THE PHULWARIA WARD ESTATE (OPPOSITE PARTY).<sup>a</sup>

*Guardian—Minor—Disability of infancy, Its continuance—Period of minority, how affected by Act XL of 1858—Majority Act (IX of 1875), s. 3.*

When a guardian has once been appointed to a minor under the provisions of Act XL of 1858, the disability of infancy will last till the age of 21, whether the original guardian continue to act or not.

AN application was made to the District Court by one Rudra Prokash Misser for a certificate of guardianship to the property of a minor brother, his co-sharer in an estate known as Phulwaria. The Collector of the district, it would appear had under an order of the Civil Court, dated September 1st 1873, been appointed manager to the estate of the applicant who was then an infant. The Collector having subse

<sup>a</sup> Appeal from Original Order No. 1 of 1886, against the order of W. Verner, Esq., Judge of Bhaugulpore, dated the 30th of December 1885.

quently withdrawn from the guardianship at the instance of the Court of Wards, it was contended on behalf of the applicant that, inasmuch as he had attained the age of 18 years, he was entitled to the certificate as a person *sui juris*. The District Court, relying on the provision of s. 3 of the Majority Act, disallowed the application, and by an order of the same date appointed one Bhola Nath Mukherjee manager of the applicant's estate.

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On appeal the same contention was raised before the High Court.

Mr. O. C. *Mullick*, and Mr. R. E. *Twidale*, for the appellant.

Baboo *Guru Das Banerjee*, Baboo *Rash Behari Ghose*, and Baboo *Jogesh Chunder Dey*, for the respondent.

The High Court (TOTTENHAM and NORRIS, JJ.) delivered the following judgment :—

This is an appeal against an order of the District Judge of Bhaugulpore refusing to appoint the appellant guardian of his minor brother under the provisions of Act XL of 1858, the ground of the refusal being that the petitioner is himself a minor, not having reached the age of twenty-one.

The learned counsel for the appellant contends that, although the petitioner has not yet reached the age of twenty-one, his minority has ceased, because the guardian once appointed by the Court, namely, the Collector, has resigned his trust; and he asks us to hold that the first clause of s. 3 of the Indian Majority Act (IX of 1875) ceases to have effect if the guardian appointed dies or resigns his trust after the minor has attained the age of eighteen years. Section 3 of Act IX of 1875 provides that "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice shall be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before." We are unable to adopt the view suggested to us of the law.

It appears to us that in order to get this construction it would be necessary to add words to the section. The learned counsel for the appellant accepts the proposition that it would be

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necessary to add to the section the words, "provided the guardian appointed does not die or cease to hold office till the minor attains the age of twenty-one." It seems to us that a guardian of the petitioner under Act XL of 1858 having been once appointed, he must by Act IX of 1875 continue to be a minor until he reaches the age of twenty-one, whether the original guardian continues to be his guardian or not. The order of the District Judge therefore disallowing the application appears to us to be correct in law.

It has also been objected that the District Judge has appointed another person provisionally to be guardian and manager for a period of two months. It is contended that there is no provision in Act IX of 1875 for such appointment. But inasmuch as the petitioner before us is a minor, no application from him can be heard unless he is properly represented.

The appeal is dismissed with costs to be recovered from the estate.

K. M. C.

*Appeal dismissed.*

*Before Mr. Justice Pigot and Mr. Justice O'Kinsaly.*

1885  
 November 18

SHURNOMOYEE DASI AND OTHERS (DEFENDANTS) v. SRINATH DAS  
 (PLAINTIFF) AND OTHERS (DEFENDANTS).\*

*Limitation—Mortgagor and Mortgagee—English form of mortgage—Conditional sale—Purchaser from mortgagor—Adverse possession—Regulation XVII of 1806, s. 8—Transfer of Property Act, s. 86—Limitation Act, XV of 1877, Sec. II, cls. 135, 147.*

A mortgage in the English form, between Hindus, of lands in the mofussil, outside Calcutta, has always been treated by the Courts as a mortgage by conditional sale.

Under Act XIV of 1859, a mortgagee was ordinarily bound to bring his suit within 12 years from the date of default, and was barred thereafter, unless it could be shown (or might properly be inferred) that the mortgagor or the person in possession held by permission of the mortgagee after the date of default.

On the 17th of November 1865, certain property situate in the district of the 24-Pergunnahs was mortgaged by the owner thereof to secure the repayment

\* Appeal from Original Decree No. 218 of 1883, against the decree of Baboo Baloram Mullick, Rai Bahadur, Second Subordinate Judge of 24-Pergunnahs, dated 7th June 1883.