

might be sued for when due, the understanding is that, if unsued for, it shall be added to other items due when the suit is brought, and shall form one entire demand, the aggregate constituting but one cause of action. The same principle is not confined to cases where there is one separate contract, but is extended to the case of tradesmen's bills in respect of which there may have been separate contracts, but in which one item is so connected with another that the dealing is intended to be continuous—*Grimbly v. Aykroyd* (1). S. 17 of the Court-fees Act was evidently not meant to apply to a case where there are various items based on one agreement, but which are intended to form one entire demand, but rather to cases where there are several and independent claims based on different titles, which, with the leave of the Court under s. 44, Civil Procedure Code, have been united in one suit.

I think therefore that the decision in *Mahip Narain v. Jagat Narain* (2) should be reconsidered, and refer the case to the Court under s. 5 of the Court-fees Act.

Mr. *Amir-ud-din*, the *Senior Government Pleader* (*Lala Juala Prasad*), *Munshi Hanuman Prasad*, and *Munshi Sukh Ram*, for the appellants.

STRAIGHT and BRODHURST, JJ.—We are of opinion that the proper fee leviable is the one calculated on the aggregate amount of the profits claimed.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Tyrrell.

DAMODAR DAS (PLAINTIFF) *v.* WILAYET HUSAIN (DEFENDANT)*.

1885
May 15.

Majority—Capacity to contract—Muhammadan over 16 years of age before Act IX of 1875 came into force—Muhammadan Law—Act IX of 1872 (Contract Act), s. 11—Act XL of 1858 (Bengal Minors Act) s. 26—Act, IX of 1875 (Majority Act), s. 2 (c).

In a suit upon a bond executed on the 5th June, 1875, by a Muhammadan who at that date was sixteen years and nine months old, the defendant pleaded that at the time when the bond was executed, he was a minor, and that the agreement was therefore not enforceable as against him.

Held that the defendant, having at the date of the execution of the bond, reached the full age of sixteen years, and so attained majority under the Muham-

* First Appeal No. 80 of 1884, from a decree of Muhammad Abdul Qayum, Subordinate Judge of Bareilly dated the 10th May, 1884.

(1) 1 Exch. 479.

(2) N.-W. P. Legal Remembrancer,
1880, H. C. Series, p. 124.

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madan Law, which, and not the rule contained in s. 26 of the Bengal Minors Act (XL of 1858), was the law applicable to him under s. 2 (c) of the Indian Majority Act (IX of 1875) before the latter Act came into force, was competent in respect of age to make a contract in the sense of s. 11 of the Contract Act (IX of 1872), and the agreement was therefore enforceable as against him.

The rule contained in s. 26 of the Bengal Minors Act is limited by its terms to "the purposes of that Act", which provides exclusively for the care of the persons and property of minors possessed of property which has not been taken under the protection of the Court of Wards; and it is to such persons only, when they have been brought under the operation of the Act as in it provided, that the prolongation of nonage under s. 26 applies.

THIS was a suit for recovery of a sum of money, principal and interest, due upon a bond executed by the defendant in favour of the plaintiff on the 5th June, 1875. The defendant (who was a Muhammadan) pleaded, *inter alia*, that at the date of the execution of the bond he was a minor, and that the agreement was therefore not enforceable as against him. The lower Court found that the defendant at the date of execution was sixteen years and nine months old. Upon this finding, it held that the provisions of Act IX of 1875 (Indian Majority Act) were applicable, that therefore the defendant, having been under eighteen years of age at the time when he executed the bond, was at that time not competent to contract, and that the suit was in consequence not maintainable against him.

The plaintiff appealed to the High Court, contending that "the respondent was not a minor according to the law applicable to him on the date of the execution of the bond in dispute."

On his behalf it was urged that "the law applicable to him" within the meaning of Act IX of 1875, s. 2 (c), was the Muhammadan Law, according to which he had attained majority at the age of sixteen years, before that Act came into force. On behalf of the respondent, it was urged that "the law applicable to him" was that contained in Act XL of 1858 (Bengal Minors Act), s. 26.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and Pandit *Bishamber Nath*, for the appellant.

Mr. C. H. Hill, for the respondent.

PETHERAM, C.J., and TYRRELL, J.—We are of opinion that the respondent was not a minor in June, 1875, when he executed

the bond on which this suit has been brought. He had then attained the full age of sixteen years, and had thus reached his majority under the Muhammadan Law, which was applicable to him before Act IX of 1875 came into force. He was consequently competent in respect of age to make a contract in the sense of s. 11 of the Indian Contract Act.

We hold that the "law applicable to" the respondent under s. 2, cl. (c) of Act IX of 1875, was the Muhammadan Law, and not the statute law contained in s. 26, Act XL of 1858, because it seems to us that the rule of that section is limited by its terms to "the purposes of that Act," which provides exclusively for the care of the persons and property of one class of minors, that is to say, minors possessed of property which has not been taken under the protection of the Court of Wards. It is to such persons, and to them only, when they have been brought under the operation of the Act, as in it provided, that in our view the prolongation of nonage under s. 26 applies. We have not overlooked the rulings to the contrary effect on this point, in forming the conclusion above stated. We may observe, however, that no ruling has been cited to us in which it has been held in terms that a Muhammadan who had not been made amenable to the provisions of Act XL of 1858 was a minor for the purposes of making a contract till he had reached the age of eighteen years.

We therefore set aside the decree of the Court below, and decree this appeal with costs.

Appeal allowed.

FULL BENCH.

1885
June 4.

Before Sir W. Comer Petheram, Kt, Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

BAL KISHEN (DEFENDANT) v. JAMODA KUAR (PLAINTIFF)*.

Second appeal—Finding on issue of fact remitted—Civil Procedure Code, ss. 565, 566, 568.

Held by the Full Bench (TYRRELL, J., dissenting) that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon

* Second Appeal No 1731 of 1883, from a decree of A. Sells, Esq., District Judge of Cawnpore, dated the 17th September, 1883, affirming a decree of Maulvi Farid-ud-din, Subordinate Judge of Cawnpore, dated the 21st December, 1882.