

plaintiff respondent instituted the suit on the 18th of April, 1900. Issues were framed on the 4th of June, 1900. The plaintiff put in all the evidence, oral and documentary, that he wished to adduce. The hearing of the case was adjourned to the 18th of January, 1901. On that date neither the plaintiff nor his pleader being in attendance, the Additional Munsif passed an order dismissing the suit "for default of prosecution," as he called it. On appeal the learned Additional District Judge pointed out that the lower Court ought to have proceeded to decide the suit under section 158 of the Code of Civil Procedure, and ought not to have dismissed it for default. It was, of course, open to the Munsif, if he considered the evidence which the plaintiff had produced insufficient, to pass a decree dismissing the suit on that ground. In that case it would have been a decree dismissing the suit on the merits, and therefore a decree from which an appeal would lie. We consider the lower appellate Court was right in remanding the case to the Court of first instance for trial on the merits. We dismiss the appeal. The plaintiff respondent will have his costs of this appeal in any event.

Appeal dismissed.

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Before Mr. Justice Knox and Mr. Justice Blair.

LACHMI NARAIN AND ANOTHER (PLAINTIFFS) v. FATEH BAHADUR
SINGH AND ANOTHER (DEFENDANTS).*

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Act No. XVII of 1876 (Oudh Land Revenue Act), Chapter VIII—Court of Wards—Disqualified proprietor—Nature of disqualification imposed by proceedings taken under Chapter VIII—Domicile.

Where a person who had been made a "disqualified proprietor" in Oudh under the provisions of Chapter VIII of Act No. XVII of 1876, attempted to sell a small portion of his property situated in the North-Western Provinces, which property had not been entered in any list of the property of the disqualified proprietor taken under the management of the Court of Wards, and had apparently escaped the notice of the Court of Wards, it was held that the disqualification imposed as a consequence of proceedings legally taken under Chapter VIII of the Oudh Land Revenue Act, 1876, was a personal

* Second Appeal No. 972 of 1899, from a decree of Babu Nilmadhab Rai, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Cawnpore, dated the 10th September, 1899, confirming a decree of Pandit Kanhaiya Lal, M.A., LL.B., Munsif of Cawnpore, dated the 24th December, 1899.

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disqualification, and extended to all dealings of the disqualified proprietor with any property wheresoever situate; nor was this disability affected by the fact that this particular property had not been specifically taken over as part of the disqualified proprietor's estate by the Court of Wards. *Sottomayor v. De Barros* (1), *In re Cooke's Trusts* (2), *Cooper v. Cooper* (3) and *Stuart v. Butts* (4) referred to.

IN the suit out of which this appeal arose the plaintiff alleged that one Chaudhri Fateh Bahadur Singh had agreed to sell to him a certain house in the city of Cawnpore and had received a portion of the consideration-money, but that he had never executed any sale deed of the house; and the plaintiff accordingly asked that Chaudhri Fateh Bahadur Singh might be compelled to execute and have registered a sale deed of the said house. Chaudhri Fateh Bahadur Singh was Taluqdar of the village of Sarausi in Oudh, and as such he had, in September, 1895, been declared a disqualified proprietor according to the provisions of Act No. XVII of 1876. Chaudhri Fateh Bahadur Singh pleaded that so far as he was personally concerned he had no objection to executing a sale-deed, but that as a disqualified proprietor he was incapacitated from doing so. The Deputy Commissioner of Unao was brought on the record as a defendant representing the Court of Wards, and he pleaded that the house was in possession of the Court of Wards, which was no party to the contract, and that Chaudhri Fateh Bahadur Singh as a disqualified proprietor could not make any contract in respect thereof. The house, it might be mentioned, was not entered in the list of property filed by Fateh Bahadur Singh when he applied to the Court of Wards to be disqualified from the management of his estate, and it was apparently only after the Court of Wards had taken over Fateh Bahadur Singh's estate that it became aware of the existence of this house. The Court of first instance (Munsif of Cawnpore) held that the pleas taken by the Court of Wards were well founded, and dismissed the plaintiff's suit. On appeal by the plaintiff the lower appellate Court (Small Cause Court, with powers of a Subordinate Judge) confirmed the Munsif's judgment and decree. The plaintiff thereupon appealed to the High Court.

(1) (1877) L. R., 3 P. D., 1.

(2) (1887) 55 L. J., Ch., 637.

(3) (1888) L. R., 13 A. C., 83.

(4) (1861) 9 H. L. C., 440.

Pandit *Sundar Lal*, for the appellants.

Mr. *A. E. Ryves*, for the respondent Court of Wards.

KNOX and BLAIR, JJ.—In this second appeal the appellants are the sons and legal representatives of one Babu Dwarka Prasad. Babu Dwarka Prasad instituted this suit originally in the Court of the Munsif of Cawnpore against Chaudhri Fateh Bahadur Singh, who is described in the plaint as a resident and taluqdar of village Sarausi, a village situated within the province of Oudh. As co-defendant he joined the Deputy Commissioner of Unao, describing him as Manager of the Court of Wards of the estate of the said Chaudhri Fateh Bahadur Singh.

The subject-matter of the suit was a kachcha house situated within the city of Cawnpore. Cawnpore, it is almost needless to add, lies within the jurisdiction of this Court. Babu Dwarka Prasad set out in the plaint that on the 8th of July, 1897, Chaudhri Fateh Bahadur Singh agreed to sell the said house, and received part of the consideration. He did not, however, come forward to execute the sale-deed, and the plaintiff accordingly asked the Court to compel the defendants to execute, complete, and effect the registration of the sale-deed in his favour.

Chaudhri Fateh Bahadur Singh admits the claim brought, and says he has no objection to the sale-deed being executed. He was, however, prohibited from executing it by the Court of Wards for Oudh. The Court of Wards took up the position that Chaudhri Fateh Bahadur Singh was, in July, 1897, incapable of entering into any contract in respect of the house, as that house was then under its control. The Court of Wards was no party to the contract, and such contract could not therefore be enforced against it.

That the Court of Wards, under Government Order No. 2250, dated the 4th September, 1895, assumed superintendence of the property of Chaudhri Fateh Bahadur Singh is not disputed. A minor question, however, does arise with reference to the house in dispute. It appears that this house is not entered in the list of property which Chaudhri Fateh Bahadur Singh prepared when he applied to the Court of Wards to be disqualified for managing his estate. The plaintiffs contend that as the

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house in dispute does not appear in the list, it never came under the superintendence of, and never vested in, the Court of Wards.

But the Courts below have dismissed the claim; they determined that Chaudhri Fateh Bahadur Singh was not capable of entering into the alleged contract, and that the house in suit had vested in the Court of Wards prior to the date of the contract; as a consequence, they held that the alleged contract could not be enforced against either defendant.

In appeal here the points raised are three in number. The first is, that the order made under Act No. XVII of 1876 cannot in law apply to property situated outside the local extent of that Act. The second is, that Chaudhri Fateh Bahadur Singh was competent in law to contract and to sell the house. The third is, that the house in suit was never placed under the charge of, and therefore never vested in, the Court of Wards.

In dealing with these pleas we have, first, to consider section 173 of Act No. XVII of 1876. Act No. XVII of 1876 is an Act which extends only to the territories which were under the administration of the Chief Commissioner of Oudh on the 10th of October, 1876, and section 173 runs as follows:—"Persons whose property is under the superintendence of the Court of Wards shall not be competent to create without the sanction of the Court any charge upon, or interest in, such property or any part thereof." If the subject-matter of the suit had been situate within the province of Oudh, it is conceded that Chaudhri Fateh Bahadur Singh could not, without the sanction of the Court of Wards, have entered into the alleged contract; but as the house in dispute is situate in the city of Cawnpore, and Act No. XVII of 1876 does not extend beyond the province of Oudh, the contention is that the disability, which is imposed by section 173, falls to the ground, and has no effect. Before, however, examining the principles upon which the capacity of a person to enter into a contract depends, and the cases of English Law which bear upon this question, we propose to consider, first, with what object the Regulations and Acts—whereby persons are deemed disqualified, and placed under the superintendence of the Court of Wards, were enacted. If it is found that from the beginning the Legislature has had as its object in

creating a Court of Wards that persons incapable of managing their own property shall be in certain cases relieved of such management, and the duties of management and superintendence transferred from them to a Court of Wards; and further, that when such transfer has been effected the incapable persons above mentioned, while so disqualified, shall be absolutely debarred from entering into any contract with reference to the property so transferred, then it may safely be presumed that it was never the intention of the Legislature to draw a sharp boundary line, and while pronouncing A on the hither side of the Ganges to be incapable of administering such of his property as is situate on the hither side of the same river, to deem him capable of managing property on the further side. The contrary presumption in such a case would be manifestly absurd, and to hold it would without express words to the contrary be unreasonable.

The earliest Regulation bearing upon the point is Regulation X of 1793—a Regulation which extended to Bengal, Behar and Orissa. The objects with which that Regulation was passed will be seen from section 5 to have been the watch and ward of, and the interest of, minors, females, idiots, lunatics, contumacious persons and persons of notorious profligacy of character who were being reduced to ruin by the misconduct of agents. The manager appointed was to have the exclusive charge of all lands, malguzari or lakheraji, as well as of all houses, tenements, goods, money and movables of whatever nature belonging to the proprietor, whose estate may be committed to his charge, excepting only the house wherein such proprietor may reside, the movables wanted for his or her use and the money allowed for the support of the proprietor and his or her family entitled to a provision, which are to be left to the care of the guardian, where distinct guardians may be appointed.

The Regulation next in order of time was Regulation LII of 1803, which created a Court of Wards for these Provinces. The preamble to this Regulation sets out in clearer language perhaps than did the former Regulation, the object with which Courts of Wards were established. Thus it says:—"It is essential to the interests and happiness of minors, and of such females as shall not be deemed competent to the management

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of their own estates, and of idiots, lunatics and other proprietors of lands paying revenue to Government, who are, or may be rendered incapable of managing these lands by natural defects or infirmities of whatever nature, that the lands of persons coming within the above descriptions shall be managed for the benefit of the proprietors by persons appointed to the trust by Government; and that a Court of Wards should be instituted with powers to superintend the conduct and inspect the accounts of the managers of the estates of such persons, and with instructions to provide for the education of minors in a manner suitable to their rank and circumstances in life."

The cases in which the property of a minor is situated in more than one province must then have been, and must now be, of frequent occurrence, specially when the minors are resident in districts bordering upon another province. It would manifestly not be in the interests of the disqualified proprietors, but would clearly run counter to them, if it were the law that only that portion of a minor's property would fall under the superintendence of the Court of Wards which was situate within the province in which the proprietor had been by law disqualified. No illustration of this is required. So far then as these regulations are a guide, we may safely presume that the intention of the Legislature was the safeguarding of the interests of incapable proprietors wholly irrespective of geographical considerations. We find nothing in the language or provisions of Act No. XVII of 1876 or No. XLIX of 1873, which runs counter to the presumption. It has, however, been urged that the mere fact that the proprietor's interests would suffer is not in itself a sufficient warrant for our ignoring the local extent expressed in unequivocal language of Act No. XVII of 1876, and for extending the provisions of the law further than what the Legislature intended. We have therefore to see whether, independently of the above presumption, the incapacity to contract, which has been created by Act No. XVII of 1876, rests upon some well-known and well-established principle of law, which, unless expressly circumscribed, is not dependent upon local limitations, but is of absolute and universal obligation.

The question of the capacity and incapacity of persons to contract has been considered by eminent jurists. It is very fully discussed in *The Conflict of Laws* by A. V. Dicey, and it is there stated, at p. 543 that "subject to the exceptions hereinafter mentioned (exceptions which do not arise in the case before us) a person's capacity to enter into a contract is governed by the law of his domicile at the time of making the contract. If he has such capacity by that law, the contract is, so far as its validity depends upon his capacity, valid; if he has not such capacity by that law the contract is invalid." Assuming for the moment that this is a correct representation of the principles of law contained in it, it would follow that Chaudhri Fateh Bahadur Singh having deprived himself of the capacity to enter into a contract with reference to the property which is under the superintendence of the Court of Wards, the contract made by him relating to the house at Cawnpore is invalid.

Story again in his "*Conflict of Laws*" (4th edition, paragraph 51) points out that all laws which have for their principal object the regulation of the capacity of persons have been treated by foreign jurists generally as personal laws. They are by them divided into two sorts, universal and special. Act No. XVII of 1876 would fall under the latter heading, namely, a law which creates an ability or disability to do certain acts, leaving the party in other respects to his general capacity or incapacity. Such a law, he says, is for the most part held by foreign jurists to be of absolute obligation everywhere, when it has once attached upon a person by the law of his domicile. After reciting the opinions of several eminent jurists, he sums up at paragraph 81, that we have this doctrine laid down as a rule of the *jus gentium*, at least, it is understood and recognised in England in regard to contracts generally, that the law of the domicile of origin or the law of the actual domicile is of universal obligation as to the capacity, state, and condition of persons.

The leading cases upon the point would appear to be *Sottomayor v. DeBarros* (1), *In re Cooke's Trusts* (2) and *Cooper v.*

(1) (1877) L R., 3 P. D., 1. (2) (1887) 56 L. J., Ch., 637.

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Cooper (1). In the first of these cases the principle of law laid down by the Lord Justices was thus expressed :—“ It is a well-recognised principle of law that the question of personal capacity to enter into any contract is to be decided by the law of the domicile.” In the second case *Stirling, J.*, cited the above passage and followed it. In the third case, Lord Halsbury quoted with approval the following passage from *Story on the Conflict of Laws*. He says :—“ *Story* has with his usual precision laid down the rule (‘ *Conflict of Laws*,’ section 64), that if a person is under an incapacity to do any act by the law of his domicile, the act, when done there, will be governed by the same law wherever its validity may come into contestation with any other country : *quando lex in personam dirigitur, respiciendum est ad leges illius civitatis quæ personam habet subjectam.*” “ There is an unusual concurrence,” he continues, “ in this view amongst the writers on international law : *Quæ ætate minor contrahere possit et ejusmodi respicere oportet ad legem, cujusque domicilii* : *Burgundus, Tract., 2 n. 6. C’est ainsi que la majorité et la minorité du domicile ont lieu partout même pour les biens situés ailleurs. Boullenois, Princip, Gen. 6. Quotiescunque de habitate aut de inhabilitate personarum quærat, toties domicilii leges et statuta spectanda* : *D’Argentre. So also J. Voet : Quoties in quæstione, an quis minor vel majorennis sit, obtinuit, id dijudicandum esse ex lege domicilii ; sit, ut in loco domicilii minorennis, ubique terrarum pro tali habendus sit, et contra.*”

It would seem, therefore, to be a well-established principle in England that the personal incapacity of an individual to contract depends on the law of the place where the contracting party is domiciled. If by the law of this place he is incapable of entering into a contract, any so-called contract entered into by him is invalid, even outside the limits within which the law of his domicile extends. If this be the case where there is a conflict of law between two countries, how much stronger is the present case where no such conflict exists, where the law as it runs in the North-Western Provinces is practically word for word the same as that running in the province of Oudh. In the particular case before us, *Chandhri Fateh Bahadur Singh*

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was undoubtedly by the law prevailing in Oudh incapable of entering into any contract with reference to the property under the superintendence of the Court of Wards, and upon the principles above set out, that incapacity would extend to contracts or so-called contracts entered into by him, though they relate to property situate outside the local limits of the province of Oudh.

No Indian case bearing upon the above points has been cited to us, and we have not ourselves been able to find any.

To the learned Government Advocate we are indebted for a case which leads us to the same conclusion, but on somewhat different grounds than those already stated. It is the case of *Stuart v. Bute* (1). It was there laid down by Lord Campbell, L. C., that the Court of Sessions in Scotland had conferred upon them by their sovereign as *Parens Patriæ* the duty to take care of all infants who required that protection, whether domiciled in Scotland or not. The benefit of the infant, which was the foundation of the jurisdiction, must be the test of the right of exercise. In this particular case, both the Courts of Chancery in England and the Court of Sessions in Scotland claimed jurisdiction over an infant, and it was held that no question of conflict of jurisdiction between the two Courts could arise, and that both, deriving their powers from the sovereign as *Parens Patriæ*, were bound to assist each other in doing what was necessary to ensure the benefit of the infant, which, in a case of this kind, was the primary consideration. This case by itself would perhaps not have been a sufficient warrant for us to hold in favour of the respondents; but looking at the case from all sides, and bearing in mind (i) that the Court of Wards has been established for the benefit of disqualified proprietors, and that both in the North-Western Provinces and in the province of Oudh, the provisions relating to the incapacity of disqualified proprietors to enter into contracts in respect of property under the superintendence of the Court of Wards are one and the same; (ii) that capacity and incapacity to contract follow the law of domicile; (iii) that the Court of Wards derives its powers from the sovereign as *Parens Patriæ*, and that the Court should if necessary extend such powers so as to safeguard the

(1) (1861) 9 H. L. C., 440.

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interest of incapable proprietors under its ward, and (iv) that no case to the contrary has been cited, we are prepared to hold that the Courts below were right when they held Chaudhri Fateh Bahadur Singh incapable of entering into a contract in respect of the subject-matter of this suit; and further that the order under Act XVII of 1876 laid down that Chaudhri Fateh Bahadur Singh was not capable to contract, which incapacity would follow him, and affect the so-called contracts entered into by him outside the local limits of that Act.

There remains the third plea to the effect that the house in suit was never placed under the superintendence of the Court of Wards. We are fully prepared to agree with the lower appellate Court that the whole of the property of a ward vests in the Court of Wards when it takes up the management of a ward's estate, especially when it is not shown, as in this case, that any property was specially reserved either by Chaudhri Fateh Bahadur Singh or the Court of Wards from the control of the latter. This view is, in our opinion, consonant and in harmony with the provisions of the Act. Whether Chaudhri Fateh Bahadur Singh at the time that he entered into this contract did or did not know of the existence of the house at Cawnpore, it is found that it at that time formed part of this property. As such, we hold that it came under the superintendence of the Court of Wards by virtue of the order of the Government. Chaudhri Fateh Bahadur Singh could not therefore create any charge upon or interest in it. The result is that this appeal must be and is dismissed with costs.

Appeal dismissed.

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December
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Before Mr. Justice Burditt and Mr. Justice Aikman.

JUMAI (OBJECTOR) v. MUHAMMAD KAZIM ALI (APPLICANT)*

Civil Procedure Code, section 344—Insolvency—Who may apply for declaration of insolvency—Judgment-debtor arrested or imprisoned.

Held that section 344 of the Code of Civil Procedure does not apply to the case of a judgment-debtor who had indeed been arrested in execution of a decree for money, but who had been released after a few hours' detention owing to the creditor's failure to pay subsistence money, and some twenty days

* First Appeal No. 91 of 1902, from an order of E. O. E. Leggatt, Esq., District Judge of Mirzapur, dated the 17th May 1902.