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but it was subject to conditions. On a perusal of those conditions, No. 4, occurs to the effect that as an exception from the conveyance of the entire estate this village is conveyed. This is not a repugnancy in the proper sense of the term, and taking the clauses of the will together it simply means that Fateh Chand takes the entire estate, with the exception of this village, while it, in proper conveyancing terms, is disposed of in favour of Musammam Gomi.

Their Lordships are accordingly of opinion that there is no ground for the argument which would upset the judgement of the learned Judges of the High Court. Their Lordships agree with that judgement, and they also agree with the observations made as to the judgement of the Subordinate Judge who, with much care had arrived at a different conclusion. The views of the High Court are shared by this Board, and accordingly they will humbly advise His Majesty that these appeals be dismissed with costs, including the costs of the petition for special leave to appeal.

Appeals dismissed.

Solicitors for the appellant: *T. L. Wilson & Co.*

Solicitors for the respondent: *Barrow, Rogers & Nevill.*

J. V. W.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr Justice Muhammad Rafiq.

BENI PRASAD AND ANOTHER (DEFENDANTS) v. LAJJA RAM (PLAINTIFF).
Minor—Guardian—Suit to set aside a decree against a minor—Minor properly represented in such suit—Fraud or collusion of guardian.

A decree obtained against an infant properly made a party and properly represented in the case cannot be set aside by means of a separate suit except upon proof of fraud or collusion on the part of the guardian.

THE facts of this case are fully set forth in the judgement of the Court.

*Second Appeal No. 21 of 1915, from a decree of O. F. Jenkins, District Judge of Agra, dated the 7th of November, 1914, reversing a decree of Shekhar Nath Banerji, Subordinate Judge of Agra, dated the 16th of April, 1914.

Mr. *J. M. Banerji* (with him *Babu Lalit Mohan Banerji*),
for the appellants.

Munshi Narain Prasad Asthana, for the respondent.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J.—This appeal arises out of a suit in which the plaintiff, in effect, sought to set aside a decree which had been obtained by one Beni Prasad. Beni Prasad's suit was based on the following allegations. He said that Lajja Ram owed a debt to one Ram Singh, that a creditor of Ram Singh had attached this debt and sold it in execution of a decree obtained against Ram Singh and that he (Beni Prasad) was the auction-purchaser of the debt. At the time that Beni Prasad brought his suit Lajja Ram was "technically" a minor. His mother had been appointed his guardian under the Guardians and Wards Act. On this account the attainment of majority by Lajja Ram was postponed from the period of eighteen years (according to Hindu law), to the special period of twenty-one years prescribed by the Guardians and Wards Act. Beni Prasad accordingly sued Lajja Ram through his certificated guardian who, at the time of the institution of the suit, was the defendant No. 2, one Tikait Narain. The allegation in the plaint in the present suit is that Tikait Narain colluded with Beni Prasad and did not plead limitation, that if limitation had been pleaded, it would have been found that the alleged debt due by Lajja Ram to Ram Singh would have been barred by limitation, that the result of not pleading limitation was that Beni Prasad got a decree. It is this decree which the plaintiff seeks to set aside having now come of age. The court of first instance dismissed the plaintiff's suit. The lower appellate court remanded the case for a finding on certain issues. The first issue was whether the plea of limitation could have been raised. The second issue was whether there had been collusion between Beni Prasad and the minor's guardian. The court found that the plea of limitation might have been raised but that there was no collusion or fraud. On the return of the findings the District Judge granted the plaintiff a decree. He does not in any way find fault with the facts found by the Subordinate Judge upon the issues remanded, but he was of opinion that where it was shown that the plea of

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limitation might have been raised, the mere fact that it was not raised, entitled the plaintiff to have the decree set aside. No doubt it is possible for a minor, where his guardian has conducted his case with gross negligence, to come to the court and seek relief by way of review of judgement. No doubt also a minor is entitled by a separate suit to set aside a decree that has been obtained against him by fraud. The present proceeding is a separate suit and we entirely agree with the remarks of FIELD, J. in the case of *Raghubar Dayal Sahu v. Bhikya Lal* (1). At page 76 the learned Judge says:—"If it be sought to set aside a decree obtained against an infant properly made a party and properly represented in the case and if it be sought to do this by a separate suit, I apprehend that the plaintiff in such a suit can only succeed upon proof of fraud or collusion." Let us consider for a moment the facts of the present case. Tikait Narain was the certificated guardian of the minor, that is to say, he was the guardian appointed by the District Judge previous to the institution of the suit and probably on the application of the minor's mother or the minor himself. Lajja Ram was a minor technically only. Had it not been for the fact that a guardian had been appointed by the court, he would have reached his full age a considerable time before the institution of the suit. Lajja Ram had property and there was no reason why he himself should not have put forward and instructed the pleader to put forward every plea and every circumstance which would have enabled him successfully to defend the suit brought by Beni Prasad. The allegation against the guardian is that he neglected to plead limitation. There is no evidence of any kind to connect Beni Prasad with the omission of the guardian to plead limitation. Further more the plea of limitation is one to which effect can be given even though not pleaded. The court is bound to give effect to the provisions of the Limitation Act, of its own motion. Therefore, notwithstanding the omission to plead limitation the facts and circumstances could have been given at the trial. In our opinion there was no evidence from which the court could infer collusion on behalf of Beni Prasad. If the view taken by FIELD, J. in the case to which we have referred is

(1) (1885) I. L.R., 12 Calc., 69.

correct, this in itself is sufficient ground for dismissing the plaintiff's suit. Even if we were to hold that a minor can avoid a decree by a separate suit solely on the ground of the gross negligence of his guardian, we do not think under the circumstances of this case any such negligence has been established, bearing in mind, in particular, the fact of the age of Lajja Ram, who the learned Subordinate Judge says was a very intelligent young man. We think the view taken by the Subordinate Judge was correct and that his decree should be restored. We accordingly allow the appeal, set aside the decree of the learned District Judge and restore the decree of the court of first instance with costs.

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Appeal allowed!

REVISIONAL CRIMINAL.

Before Justice Sir Pramoda Chavan Banerji.

EMPEROR v. GHAMMAN AND OTHERS.*

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April, 14.

*Act (Local) No. X of 1900 (N.-W. P. and Oudh Municipalities Act), section 132
—Breach of rule made under clause (e) of section 130.—Notice.*

In order to render a person liable to punishment for breach of a rule made under clause (e) of section 130 of the Municipalities Act (Local I of 1900), by reason of the continuance of sale or exposure for sale of certain specified articles upon any premises which were at the time of the making of such rule used for such purpose, it is necessary that six months' notice in writing should have been served upon him in the manner provided by law; and conviction in the absence of such notice is bad in law.

THE facts of this case are fully set forth in the judgement of the Court.

The Assistant Government Advocate, (Mr. R. Malcomson), for the Crown.

The opposite parties were not represented.

BANERJI, J.—This case has been referred by the learned Sessions Judge of Budaun with the recommendation that the conviction of the twenty-three accused persons in this case under section 132 of the Municipalities Act, should be set aside and the fines imposed on them refunded. It appears that the Municipal Board of Ujhani made a rule under section 130 of the

* Criminal Reference No. 190 of 1916.