

lower appellate Court, and remand the case for replacement on the file and disposal upon the merits. Costs will follow the result.

STUART, C. J.—I approve of, and concur in, the order of remand proposed by Mr. Justice Straight.

*Cause remanded.*

*Before Mr. Justice Straight and Mr. Justice Duthoit.*

MAUJI RAM (PLAINTIFF) v. TARA SINGH (DEFENDANT).\*

*Guardian and Minor—Mortgage without the sanction of the Civil Court—Act XL of 1858, s. 18—Void Contract—Ratification by minor.*

A minor cannot ratify a mortgage of his immoveable property made by his guardian appointed under Act XL of 1858, without the sanction of the Civil Court, such a mortgage being under s. 18 of that Act void *ab initio*.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Hanuman Prasad*, for the appellant.

Pandit *Ajudhia Nath* and Munshi *Kashi Prasad*, for the respondent.

The High Court (STRAIGHT, J., and DUTHOIT, J.,) delivered the following judgment:—

STRAIGHT, J.—On the 29th August, 1872, Prem Sukh, the certificated guardian of the defendant, Tara Singh, then a minor, hypothecated certain immoveable property belonging to his ward to Jiwan and Chattar, for an advance of Rs. 95, which was to be repaid on or before the 1st February, 1880. It is admitted that Prem Sukh did this without the sanction of the Civil Court first obtained, as required by s. 18 of Act XL of 1858. It is obvious, therefore, that this contract was void. On the 11th September, 1878, Tara Singh himself executed a bond for Rs. 47, hypothecating property for its repayment, but this instrument was not registered. Its bearing upon the present case is that it contains the following passage: “ Besides this bond there is one bond (registered) for

\* Second Appeal, No. 67 of 1881, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Agra, dated the 27th September, 1880, reversing a decree of Maulvi Mubarak-ul-lah, Munsif of Jalesar, dated the 11th June, 1880.

Rs. 95 dated Bhadon Badi 11th, Sambat 1929, and another (unregistered) for Rs. 50, dated Asadh Sudi 9th, Sambat 1930, both executed by my guardian Prem Sukh: there is no other beside these: any excuse or objection made by me shall be considered false." The bonds of the 29th August, 1872, and Asadh Sudi 9th, Sambat 1930, were sold by Jiwan and Chattar to the plaintiff-appellant on the 14th January, 1880. The present suit was instituted on the 13th February, 1880, and it is based upon the bond of the 29th August, 1872, to recover Rs. 95 principal and Rs. 170 interest, by enforcement of hypothecation against the property pledged therein. The Munsif decreed the claim, holding that the words in the bond of the 11th September, 1878, already set forth, amounted to an admission by Tara Singh after he came of age, and that the consideration of the bond executed by his guardian had been received and was due from him. The Subordinate Judge reversed this decision, and the plaintiff appeals to this Court. It is plain that this suit, which is brought on the bond of the 29th August, 1872, must fail. That instrument was *ab initio* void, by reason of its having been executed by Prem Sukh directly in contravention of the provision of law contained in s. 18 of Act XL of 1858, and the hypothecation contained in it was worthless. It was therefore out of the power of the defendant, on coming of age, to make this void contract a valid and binding one, though it was of course competent for him to enter into a fresh agreement to pay the debt on his own account. This he would seem to have done by the terms of the bond of the 11th September, 1878. Whether the words of that instrument are sufficient to create a hypothecation is a point that need not be considered, first, because the plaintiff's present claim is not based upon it, and next, if it were, its non-registration would be an insurmountable obstacle to his obtaining a decree for enforcement of lien. It may be that the plaintiff could have brought a suit for the simple debt, treating the words in the bond of the 11th September, 1878, as a binding acknowledgment and promise to pay. But this is not the shape in which he has presented his claim, and as brought it has been properly rejected. The appeal must therefore be dismissed with costs.

*Appeal dismissed*