

1881
 EMPRESS OF
 INDIA
 "R.
 RANDHIE
 SINGH.

Nagabhushanam (1). The learned Judges observe: "Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness (*luxuria*). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories." The only offence which the facts appear to me to establish is voluntarily causing hurt under s. 323. They certainly do not establish the offence of culpable homicide; since, looking to the implement used, and the moderate force with which the brick was thrown, the prisoner cannot be said to have had the intention to cause death, or to cause such bodily injury as was likely to cause death, or even the knowledge that he was likely by his act to cause death. Death would not have been a probable consequence of his act if the diseased spleen had been sound, and the accused was not aware that it was diseased. Nor can I say, looking to all the circumstances, that he intended to cause grievous hurt, or that grievous hurt was a probable consequence of the act. But finding the accused guilty of an offence under s. 323, Indian Penal Code, I consider the sentence to be inadequate, and in addition to the fine already imposed, I sentence him to rigorous imprisonment for three months.

APPELLATE CIVIL.

1881
 March 7.

Before Mr. Justice Oldfield and Mr. Justice Straight.

KHWAHISH ALI (DEFENDANT) *v.* SURJU PRASAD SINGH (PLAINTIFF).*

Minor—Majority—Act IX of 1875 (Majority Act), s. 3—Act XL of 1858.

A minor of whose person or property a guardian has been appointed under Act XL. of 1858 does not attain his majority when he completes the age of eighteen years, but when he completes the age of twenty-one years.

* First Appeal, No. 113 of 1880, from a decree of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 29th May, 1880.

THE plaintiff in this suit claimed to recover certain moneys lent on his behalf, while he was a minor, to the defendant. He stated in his plaint that he had attained the age of majority on the 1st October, 1877, and that the certificate of guardianship which had been granted to his mother under Act XL. of 1858 had been cancelled by the District Court on the 8th February, 1878, on the ground that he, having completed the age of eighteen years, had attained the age of majority. The defendant set up as a defence to the suit, *inter alia*, that, as the plaintiff's mother had been appointed his guardian under Act XL. of 1858, and as the plaintiff had not at the time of suit completed the age of twenty-one years, the plaintiff had not, regard being had to the provisions of s. 3 of Act IX. of 1875, attained the age of majority, and he therefore could not sue. The Court of first instance disallowed this defence, and proceeded to determine the suit on its merits, and gave the plaintiff a decree. The defendant appealed to the High Court, again contending that the plaintiff, not being twenty-one years of age, was a minor, and was not competent to bring the suit.

1881

 KHWAHISH
 ALI
 v.
 SURJU PRA-
 SAD SINGH.

Mr. Conlan and Pandit *Ajudhia Nath*, for the appellant.

Mr. Colwin, Pandit *Nand Lal*, and *Shah Asad Ali*, for the respondent.

The judgment of the Court (OLDFIELD, J., and STRAIGHT, J.) was delivered by

OLDFIELD, J.—We must allow the first ground of appeal and hold that the plaintiff, being a minor according to the provisions of the Indian Majority Act (Act IX. of 1875) on the date of the institution of this suit, could not maintain the suit. S. 3 of the Act is to the effect that “every minor of whose property or person a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act or in any other enactment, be deemed to have attained his majority when he shall have completed his age of 21 years, and not before.” It appears that a guardian was appointed for the plaintiff under the provisions of Act XL. of 1858, and the certificate of guardianship was subsequently cancelled on 8th February, 1878, when

1881

EMILWAHISH
ALI
v.
NURJU PRA-
SAD SINGH.

plaintiff's age was 18, on the ground that he had attained his majority at that age. This was done in violation of the provisions of s. 3 Act IX. of 1875. The fact, however, that a guardian was appointed under Act XL. of 1858 brings the plaintiff under the operation of s. 3, Act IX. of 1875, and he must be deemed to have attained his majority when he completed his age of 21 years, and not before. The removal of the guardian appointed under Act XL. of 1858, before the minor attained the age of 21, cannot take his case out of the operation of s. 3, for it is sufficient to give effect to the provisions of that section as to the age of majority that a guardian has been appointed for the person or property of a minor by a Court of Justice. As the plaintiff had not attained his majority when the suit was instituted, he was incompetent to maintain it, and the proceedings must be set aside. We decree the appeal and dismiss the suit with costs.

Appeal allowed.

1881

March 9.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

HUSAIN ALI KHAN (PLAINTIFF) v. HAFIZ ALI KHAN (DEFENDANT).
Registered bond—Act XV of 1877 (Limitation Act), sch. ii, No. 116.

Held that No. 116, sch. ii of Act XV. of 1877, is applicable to a suit on a registered bond for the payment of money.

This was a reference to the High Court by Mr. R. M. King, District Judge of Saháranpur, under s. 617 of Act X. of 1877. The claim in the suit which gave rise to this reference was one to recover Rs. 258-12-0, principal and interest, on an instrument dated the 11th July, 1876, described as a "bond." That instrument was to the following effect: "I, Hafiz Ali, do hereby declare that I have taken a loan of Rs. 300, half from Husain Ali, and half from Khurshed Ali, Asghar Ali, and Ahmad Ali: I agree to repay the said sum with interest at ten annas per cent. per mensem on demand: whatever payments are made shall be endorsed on this bond, and without such endorsement the allegation of a payment shall be invalid." This instrument was duly registered. The plaintiff, Husain Ali, claimed his moiety of the principal sum,