

it was not palpably dishonest, for while the original drawing and accepting of the hundi between the plaintiff and him was of an accommodation character, he yet took the value of it from the first holders, Bachai Lal and Sheorakhan Lal, and kept the money. Therefore, on the plaintiff being ultimately called upon to pay, and paying the value covered by the hundi, he was bound to reimburse the plaintiff, whose demand, under the circumstances in this suit, is a perfectly just one. This conclusion is clearly within the principle of the case of *Reynolds v. Doyle* (1), referred to on p. 130 of Byles' Treatise on Bills of Exchange, 10th ed., where it was laid down—“A party who procures another to lend his acceptance, thereby engages either himself to take up the bill, or else within a reasonable time before the bill becomes due, to provide the accommodation acceptor with funds for so doing, or, lastly, to indemnify the accommodation acceptor against the consequences of non-payment.” Ram Prasad's appeal is therefore dismissed with costs.

1883

 NAND RAM
 v.
 SITAL
 PRASAD.

STUART, C. J., and BRODHURST, J.—This appeal must be allowed. Having regard to the findings on our order of remand, the defendants Nand Ram and Babu Ram incurred no liability to the plaintiff. They merely acted as temporary bankers of Ramphal, giving him certain banking facilities for partially cashing the hundi. In fact they appear to have held the hundi for two days, at the end of which time they returned it to him with the balance of the money. Under these circumstances Nand Ram and Babu Ram cannot be said to have incurred any liability to the plaintiff. This appeal therefore prevails, and the suit against these defendants-appellants Nand Ram and Babu Ram must be, and is, dismissed with costs.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

THE COLLECTOR OF BENARES AS MANAGER ON BEHALF OF THE COURT OF WARDS OF THE ESTATE OF MASUMA BIBI (DEFENDANT) v. SHEO PRASAD AND ANOTHER (PLAINIFFS).*

1883
 March 2.

Disqualified proprietor—Power to enter into contracts—Act VIII of 1879, ss. 23, 24—Act XIX of 1873 (N.-W. P. Land-Revenue Act), s. 205.

A suit was brought against a disqualified proprietor for money due on a bond, given while her property was under the superintendence of the Court

* First Appeal No. 52 of 1881, from a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Benares, dated the 18th March, 1881.
 (1) 1 M. & G.; 2 Scott, N. R., 45.

1883
 THE COLLEC-
 TOR OF
 BENARES
 v.
 SHEO
 PRASAD.

of Wards. The Collector was made a defendant to this suit "because the property of the defendant obligor had come under the superintendence of the Court of Wards before the execution of the bond." *Held* that the Collector's *status* in the suit, namely, as representative *ad litem* of the defendant, was sufficiently described to entitle him to raise the question of the legal capacity of the defendant to enter into the bond.

The mere disqualification of a proprietor to manage his estate does not carry with it a general and absolute disqualification to enter into any contracts at all.

Held, therefore, where a person whose property was under the superintendence of the Court of Wards, burrowed money, and gave a bond for the payment of the same, and was sued on the bond in the name of the Collector, that the Court was competent to make a decree against such disqualified proprietor.

THE plaintiff in this suit, represented by the respondents in this appeal, sued the defendants Nos. 1 to 4, that is to say, Masuma Bibi and Muhammad Hasan Khan, and his wife and son, for the amount of a loan secured by a personal bond, dated the 2nd December, 1876, making the Collector of Benares the 5th defendant, because, as stated in the 3rd paragraph of the plaint, "the property of defendants Nos. 1 to 4 had come under the control of the Court of Wards before the execution of the bond." The defence of the Collector to the suit was that the lands of Masuma Bibi, being under the Court of Wards, could not be made liable for the debt, as the loan had been taken without the knowledge and consent of the Court, and such lands should therefore be exempted from liability for the debt. The Court of first instance held that the question whether the lands of Masuma Bibi were liable for the debt did not arise, as the plaintiff did not make any claim in respect of such lands; and gave the plaintiff a decree against defendants Nos. 1 to 4 personally.

The Collector appealed to the High Court, as manager on behalf of the Court of Wards of the estate of Masuma Bibi, contending that, as Masuma Bibi was a disqualified proprietor when she executed the bond, she was not competent to execute the same, and the claim based thereon could not be enforced; and that the Court of first instance should have determined whether or not the lands of Masuma Bibi should be exempted from the claim or not.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellant.

Munshi *Hanuman Prasad* and Pandit *Bishambhar Nath*, for the respondents.

1883

THE COLLECTOR OF
BENARÉS
v.
SHEO
PRASAD.

The Court (STRAIGHT and TYRRELL, JJ.) delivered the following judgment :—

STRAIGHT, J.—Although the Collector has not been directly cited in the suit as the representative of the defendant Masuma Bibi, a disqualified proprietor, whose property is now under the superintendence of the Court of Wards, in manner required by s. 23 of Act VIII of 1879, amending Act XIX of 1873, s. 205, we think that paragraph 3 of the plaint may be accepted as sufficiently describing his position and character in the litigation, namely, as representative *ad litem* of Masuma Bibi, and as such entitled to raise on her account the points involved in the second and third pleas in appeal, namely, her legal capacity to contract simple money-debts.

It is conceded, and indeed the language of s. 24 of Act VIII of 1879 leaves no room for doubt upon the matter, that no disqualified person, whose property is under the superintendence of the Court of Wards, can without the sanction of that Court create any charge upon such property, and it is equally clear that such property is not liable to sale in execution of a decree obtained in regard to any contract entered into by such disqualified person during the period his property has been under the superintendence of the Court. Assuming, therefore, that we uphold the decision of the lower Court giving the plaintiff a simple money-decree against Masuma Bibi, he is directly prohibited by law from enforcing it against any portion of her property that is under the Court of Wards, as the contract on which he sues was entered into by her after her estate had come into the custody of that Court. Unless the decretal amount is in some way or another discharged, the plaintiff would seem to have no means of enforcing execution of his decree except by the arrest of the Musammat. This, however, is somewhat beside the question raised by the 2nd and 3rd pleas to which we have already referred. Reading the provisions of the law as contained in Chapter VI of Act XIX of 1873, and the amendments thereof provided in Act VIII of 1879, we are by no means prepared to go the length of holding that the mere disqua-

1883
 THE COLLECTOR OF
 BENARES
 v.
 SHEO
 PRASAD.

lication of persons to manage their estates is to carry with it a general and absolute disqualification to enter into any contract or contracts whatever. S. 24 of Act VIII of 1879 certainly says nothing of the kind; on the contrary, the terms of the second paragraph of s. 205B seem to contemplate that contracts may in some cases be entered into, but it prevents decrees obtained in suits upon them being enforced in execution against the property which is out of the custody and control of the disqualified person and in the hands of the Court of Wards. Such being the view we entertain, we cannot say that Masuma Bibi was incompetent to effect the loan which is the subject of the present suit, and we cannot therefore disturb the decision of the lower Court. The appeal must be dismissed with costs.

1883
 March 3.

Before Mr. Justice Straight and Mr. Justice Oldfield.

RAMAUSAR PANDEY (DEFENDANT) v. RAGHUBAR JATI
 AND OTHERS (PLAINTIFFS).*

Suit for possession of immovable property—Suit for cancellation of instrument—Act XV of 1877 (Limitation Act), sch. ii, Nos. 91, 142.

The plaintiff sued to set aside a mortgage by conditional sale of certain immovable property belonging to him, made on his behalf during his minority, and for possession of the property. *Held* that the suit was one described in No. 142, sch. ii, Limitation Act, 1877, and not in No. 91 of that schedule.

THE plaintiffs in this suit alleged that one Srinath Jati died leaving the plaintiff Raghubar Jati as his successor to 24 bighas, 11 biswas of land, the latter being a minor at the time; that on the 27th October, 1865, Raghubar Jati being still a minor, Alia, styling herself widow of Srinath Jati, and mother of Raghubar Jati, had mortgaged the land by conditional sale to the defendant Ramausar Pandey, ostensibly for the benefit of the minor; that Alia, not being the widow of Srinath Jati, was not competent to make such mortgage, and the same had not been made for the benefit of the minor; that in 1871, Raghubar Jati being still a minor, the defendant, Ramausar Pandey, had applied for foreclosure, but the foreclosure proceedings were invalid, as the notice of foreclosure had issued under the signature of the Munsarim of the District

* Second Appeal No. 583 of 1882, from a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 14th February, 1882, modifying a decree of Maulvi Muhammad Bakhsh, Subordinate Judge of Ghazipur, dated the 13th September, 1881.