

# THE INDIAN LAW REPORTS

*Rangoon Series.*

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## APPELLATE CIVIL.

*Before Mr. Justice Po Han.*

SHARFATH ALI

*v.*

NOOR MAHOMED.\*

1923

Sept. 3.

*Minor, promissory-note in favour of—Suit by the minor for the obligation on the note.*

*Held*, that a promissory-note in favour of a minor is not void and can be enforced. \*

*Mohori Beebee v. Dharmadas Ghose*, 30 Cal., 539—*distinguished*.

*Rungarazu Sathurazu & Co., v. Maddura Basappa*, 24 Mad. L. J. 363—*followed*.

Trevelyan's *The Law Relating to Minors*, 5th Edition—*referred to*.

*Villa*—for the Appellant.

*Patel*—for the Respondent.

The sole point for determination in this appeal is whether an on demand promissory-note executed by an adult person in favour of a minor can be enforced by the minor by filing a suit on it.

The learned counsel for the adult executant of the promissory-note argues that the contract was void *ab initio*, and relies on the well known Privy Council

\* Civil Miscellaneous Appeal No. 277 of 1922 against the decree of the Divisional Court of Hanthawaddy in Civil Appeal No. 69 of 1923.

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case of *Mohori Beebee v. Dharmadas Ghose* (1) and the commentary of the learned author Trevelyan on "The Law Relating to Minors" to the effect that a minor "cannot apparently recover money which has been lent by him or is due to him in any way under a contract made by him." (2)

The Privy Council case held that a mortgage executed by a minor was absolutely void and not merely voidable, and in that case performance of the promise or contract was sought from the minor. That case is different from the present one in which performance of the promise to pay the money is sought from the adult executant of the pro-note. The case of *Rungarazu Sathrurazu and others v. Maddura Basappa* (3) is parallel to the present one. It was held there that a promissory-note payable on demand executed in favour of a minor was not void and could be sued upon when the minor did not subject himself to any detriment by accepting it. The appellant's learned counsel contends that that ruling is not an authorized report. But there is nothing to prevent me from studying the reasoning in it and following it in the absence of any authorized ruling to the contrary which is binding on me. In the present case there is no question of enforcement of a contract on the part of a minor. The consideration on the minor's side is not the immediate point for determination. Ordinarily that consideration would have been executed. The point in question is whether the adult executant of the pro-note is bound by his promise to pay the money and that promise can be enforced against him. There is nothing

(1) (1903), 30 Cal., 539.

(2) Trevelyan on The Law Relating to Minors, 5th Edition, p. 14.

(3) (1913), 24 Mad. L. J., 363.

left for the minor to perform ; he has performed his part entirely and thereby the executant of the pro-note has enjoyed the benefit of the loan. No contractual obligation has been incurred by the minor in favour of the executant of the pro-note on account of the minor lending his money to or of the execution of the pro-note by the executant, but the minor merely receives a benefit when he gets a pro-note from an adult person. The law does not regard a minor as incapable of accepting a benefit and there is no reason why a minor should not be capable of accepting a pro-note.

The executant was competent to undertake the obligation at the time of execution of the pro-note. He is bound by that obligation and the pro-note can be enforced against him.

With reference to the commentary of the learned author Trevelyan with due deference I beg to differ from it.

The appeal is dismissed with costs.

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