

had been a decree already passed for the payment of that amount. We think, therefore, that we must treat the application made by the plaintiff as one made in execution of a Small Cause Court decree, and there is no second appeal from such an application. There is no reason why we should treat it as an application under section 115 of the Civil Procedure Code. The appeal is dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and
Mr. Justice Fawcett.*

MOTILAL MANSUKHRAM (ORIGINAL PLAINTIFF), APPLICANT *v.* MANEK-
LAL DAYABHAI (ORIGINAL DEFENDANT), OPPONENT*.

*Contract—Minor—Void contract—Indian Contract Act (IX of 1872),
section 65.*

Plaintiff sued to recover value of the goods sold to the defendant. The defendant contended that he was a minor at the date of the transaction. The Subordinate Judge held that the defendant was a minor and dismissed the plaintiff's suit. On an application being made to the High Court, it was contended that under section 65 of the Contract Act the defendant was either bound to restore the goods or to give its price.

Held, discharging the rule, that section 65 of the Contract Act started from the basis of there being an agreement or contract between competent parties, and had no application to a case in which there never was and never could have been any contract.

Mohori Bibee v. Dharmodas Ghose⁽¹⁾, relied on.

APPLICATION under extraordinary jurisdiction against the decision of M. N. Choksi, First Class Subordinate

* Civil Application No. 7 of 1920 under Extraordinary Jurisdiction.

⁽¹⁾ (1903) 30 Cal. 539.

1920.

RAJACHARYA
v.
CHEMANNA.

1920.

June 22.

1920.

Judge at Ahmedabad, in Small Cause Suit No. 1270 of 1918.

MOTILAL
MANSUKH-
RAM

v.

MANEKLAL
DAYABHAI.

Suit to recover money.

Plaintiff brought a Suit No. 1270 of 1918 to recover Rs. 350 as the price of the goods sold to the defendant on the 6th September 1917.

The defendant pleaded that he was born on the 10th April 1900 and bought nothing from the plaintiff.

In the Subordinate Judge's Court an issue raised was "Is the plaintiff's claim proved":—The Subordinate Judge recorded a finding on the 11th December 1918 to the following effect:—"The plaintiff did sell the goods but the defendant was a minor at the time and so the contract was void but under section 65 of the Contract Act he is either bound to restore the goods or give its price." Thereafter on the 19th September 1919 the Subordinate Judge ultimately recorded a negative finding on the issue raised and dismissed the plaintiff's suit.

The plaintiff preferred an application to the High Court under its extraordinary jurisdiction.

G. N. Thakor, for the applicant.

R. J. Thakur, for the opponent.

MACLEOD, C. J. :—It would have been more satisfactory if the Small Cause Court Judge had given some reasons for coming to the conclusion he did contrary to that which he arrived at nine months previously. Still the Privy Council Ruling in *Mohori Bibee v. Dharmodas Ghose*⁽¹⁾ at p. 548 is too clear for us to consider any other decision possible. It may be said that a contract, purporting to be made between two persons competent to contract, after it is discovered that one of the persons was a minor at the date of the contract, becomes thereby

(1) (1903) 30 Cal. 539.

an agreement unenforceable by law, and therefore void under section 2 of the Indian Contract Act, and until it was discovered to be void on the evidence, because one of the parties was a minor, it purported to be a perfectly good contract. But their Lordships of the Privy Council distinctly say that section 65 starts from the basis of there being an agreement or contract between competent parties; and has no application to a case in which there never was, and never could have been any contract, and though according to the argument of the applicant's pleader that decision conflicts with the words of the section, still as long as it stands it is binding on us. The rule, therefore, must be discharged with costs.

1920.

MOTILAL
MANSUKH-
RAM
v.
MANEKLAL
DAYABHAI.

Rule discharged.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

JAMNADAS SHIVRAM BARI (ORIGINAL PLAINTIFF No. 1), APPELLANT v. CHUNILAL HAMBIRMAL MARWADI (ORIGINAL DEFENDANT), RESPONDENT^c.

1920.

June 24.

Malicious prosecution—Institution of criminal proceedings—Reasonable and probable cause—Malice—Inference of malice—Damages.

One V had obtained on lease a piece of land from Government. Under an arrangement made with V, plaintiff No. 3 raised crop on the land. The crop was sold by plaintiff No. 3 to plaintiff No. 1. The defendant claimed to be a purchaser of the crop from V and began to reap it. On being obstructed by the plaintiffs, the defendant filed a complaint against them for theft. They were convicted by the Magistrate, but on appeal the conviction was set aside on the ground that the probabilities were strongly in favour of plaintiff No. 3's assertion that under the arrangement he made with V he had a right to the crop. The plaintiffs thereupon sued the defendant for damages for malicious prosecution.

^c First Appeal No. 139 of 1918.