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within the original jurisdiction. It thus appears to me that I am justified in coming to the conclusion that, with the purpose of making better provision for the care of the persons and property of minors in the Presidency of Bengal, the Legislature by the 26th section of this Act enacted that eighteen years should be the limit of minority, without any condition as to place within the Presidency. Clearly this construction of the section does "not affect the powers of the High Court over the person or property of any minor subject to its jurisdiction:" it only lengthens the period of time in each case during which those powers can be exerted. Also, I may repeat the remark made by the late Chief Justice in the Full Bench case to which I have referred, that, for minors taken under the charge of the Court of Wards, minority continues to the same limit of eighteen years, so that under the view which I have taken of the Act, a *minimum* amount of inequality is left in existence.

I am therefore of opinion that the defendant, at the time when he entered into the contract upon which he is sued, was labouring under the disability of minority. He has done nothing since that time to ratify that contract, and consequently this suit must be dismissed with costs on scale No. 2.

Suit dismissed.

Atterney for the plaintiff: Mr. *Owen*.

Attorneys for the defendant: Messrs. *Gillanders* and *Chunder*

[APPELLATE CIVIL.]

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April 20.

Before Mr. Justice Macpherson and Mr. Justice Mookerjee.

FAKIR CHAND (DEFENDANT) *v.* THAKUR SING (PLAINTIFF).*

see also 15 B L R 82.

Declaratory Decree, Suit for—Act VIII of 1859, *s.* 15—*Cause of Action.*

A suit will lie to set aside a registered deed on the mere allegation that it is a forgery.

* Special Appeal, No. 2218 of 1870, from a decree of the Judge of Shahabad, dated the 17th August 1870, affirming the decree of the 1st Subordinate Judge of that district, dated the 4th May 1870.

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THIS was a suit to set aside a mortgage bond, purporting to have been executed by the plaintiff in favor of the defendant on the ground that it was a forgery, and that the registration thereof had been obtained by false personation,

The defence was that the deed was genuine, and that the plaintiff himself had got it registered.

The Subordinate Judge held that the plaintiff had failed to make out a *prima facie* case, yet, as the defendant had failed to prove the execution and due registration of the bond, he passed a decree in favor of the plaintiff.

On appeal, the Judge found from the evidence of the plaintiff that there was no momentary transaction between the plaintiff and the defendant, that the circumstances under which the amount was alleged to have been borrowed were disproved by the evidence, and that the defendant could not show the entry of the transaction in his own khatta books, and held that the plaintiff had made out a *prima facie* case to call upon the defendant to prove his case, and that the defendant had failed to prove the execution and registration of the bond. He accordingly confirmed the decree of the lower Court.

The defendant appealed to the High Court.

Mr. *Ghose* (with him Baboo *Debendra Narayan Bose*) for the appellant.—The plaint does not disclose any cause of action [MACPHERSON, J.—You did not raise this objection before the lower Appellate Court, so you cannot raise it here.] An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint—*Colvin Cowie* v. *Elias* (1) Where a ground of appeal goes to the root of the case,—*viz.*, that the plaintiff had no cause of action,—it may be taken for the first time in special appeal:—*per* Paul, J., in *Sheikh Jan Ali* v. *Khonkar Abdur Kuhma* (2). In this case the plaintiff neither alleges nor proves any injury. The suit will not therefore lie. [MACPHERSON, J.—Has not the defendant thrown a cloud over the plaintiff's title?] The defendant as yet has done nothing to injure the plaintiff's title. The suit is premature. In *Sheo Lal Chowdhur* v. *Chunder Benode Oopadhya* (3), this Court held that, though the defendant had put

(1) 2. B. L. R., A. C., 213. (2) 6 B. L. R., 154. (3) 9 W. R. 586.

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forward certain pottas in a *butwara* proceeding, the plaintiff was not entitled to bring a suit to have it declared that those documents were forgeries. See *Udai Chandra Mandal* v. *Ahmedulla* (I). A suit will not lie for a declaration that certain

(1) *Before Mr. Justice Bayley and Sir C. Hobhouse, Bart.*

The 6th December 1869.

UDAI CHANDRA MANDAL AND OTHERS (PLAINTIFFS) *v.* AHMEDULLA AND OTHERS (DEFENDANTS).*

Baboos *Akhil Chandra Sein* and *Girish Chandra Ghose* for the appellants.

Baboo *Bhawani Charan Dutt* for the respondents.

THE facts are fully stated in the judgment of the Court which was delivered by

HOBHOUSE, J.—These were suits to have the plaintiff's right of possession declared in certain lands, and to set aside certain alleged fraudulent talooki pottas which it was averred by the plaintiff stood as obstacles to his attaining to his right.

The plaintiff's statement was that the lands in question were originally khas lands of Government; that Government had sold their rights to Ahmedulla, defendant No. 2, and that the said defendant had created a certain talooki potta in favor of defendant No. 1, Abul Reza, a potta namely which the plaintiff averred was that obstacle to his right which he wished to remove.

The lower Courts have, in substance, found that the plaintiff has a right of occupancy of some kind or other, they do not say what; but in substance they hold that notwithstanding that right of occupancy, the defendant Ahmedulla was not prevented by the agreement under which he brought the land from Government from executing the talooki pottas to which the plaintiff objected. Whether this last finding is a correct finding or not, it does not seem to us necessary to determine, because from the modein which the plaintiff has laid his suits, we think that they do not either disclose a sufficient cause of action or a sufficiently distinct right to entitle, or indeed to enable the Courts to make any declaration in favour of the plaintiff. The plaintiff simply claims a right of occupancy of some kind. Until therefore, that occupancy was disturbed by some act on the part of the defendants, there would necessarily be no cause of action. Now in this case there is nothing on the record to show that the right of occupancy in question was disturbed by any act on the part of the defendants. These defendants possibly did as between themselves come to some agreement by which one was to be a talookdar holding under the other; and it seems also that one of the defendants did sue the other for arrears of rent and got a decree. But the decree was never executed, much less did the defendants or either of them under color or by virtue of that decree attempt after it to disturb the plaintiff's occupancy. It is possible that it may have been the intention of the defendants so to act hereafter, but as a matter of fact they did not do so, and the plaintiff therefore had no cause of action so far as they were concerned. This fact alone would be fatal to the plaintiff's cause, but when we come to look into the nature of the plaintiff's statements, and to the nature of the declaration which he demanded of the Court, we find it impossible to say what exactly that right was, which the plaintiff called upon the Courts to declare. In one part of his plaint, he seems to demand a right of occupancy without paying any rents at all. In another part, he seems to demand a right of occupancy after settlement of rent, which he seems

* Special Appeals, No. 1864 to 1869, and analogeous cases from the decree of the Subordinate Judge of Chittagong, dated the 21st June 1869, reversing the decrees of the Moonsiff of that district, dated the 15th July 1868.