some prompt act to repudiate the alienation, otherwise ratification must be presumed—*Doorga Churn Shaha* v. *Ramnarain Doss* (1).

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Now a contract which is made by a minor is voidable only; it is not necessarily void, and if it has been made for a consideration, which was of the nature of a necessary to the minor, it is not even voidable. I think that when, as is the case here, a minor chooses to remain quiet for eleven years, after he has attained his majority, and for eleven years and eleven months after the contract, without doing anything in any shape to repudiate it, a Court of Equity is bound as against him to presume that the consideration for the contract was of such a character as to bind him, or that he had after coming of age ratified the contract, unless this long period of silence can be explained, or the original contract impeached upon grounds going to its merits, other than that of the minority of the vendor.

No sort of suggestion appears to have been made in this case that there was any good reason for the plaintiff's long silence, or that the contract of sale was not *bonâ fide* on the part of the defendant.

I am, therefore, of opinion that the lower Appellate Court was wrong in setting aside the sale. Even had there been good ground for doubting the binding character of the contract of sale, it ought not to have been set aside on any other terms than that of the plaintiff's refunding the purchase-money. As I have said, I am of opinion that the decision of the lower Appellate Court is wrong, and ought to be reversed, and it must accordingly be reversed with costs both in this Court and the Court below.

MITTER, J.—I concur. I am not quite sure that the plaintiff's suit is not barred by the provisions of cl. 16, s. 1, Act XIV of 1859. It is true that the plaintiff has sued for the recovery of an immoveable property, but his right to that property is dependent on his right to have the sale by which it was transferred to the defendant set aside. The law has not laid down any specific period of time for an action to set aside such a sale, and I am, therefore, inclined to think that the plaintiff's suit, so far as it relates to the reversal of that sale, would be barred by the provisions of the clause above referred to; and if he is not in a position to have that sale set aside, his claim for the recovery of the immoveable property in question must necessarilly fall to the ground.

But I would add that I entirely concur in the opinion of my learned colleague that the plaintiff is not entitled to succeed in this action in consequence of his silence for eleven years, which has not been explained in any manner whatever, and which may be therefore taken as a sufficient ratification of the sale.

The decree of the lower Appellate Court must be reversed with costs.

(1) *Before Mr. Justice Phear and Mr. Justice Mitter.*

DOORGA CHURN SHAHA (ONE OF THE DEFENDANTS) v. RAMNARAIN DOSS (PLAINTIFF).*

The 14th February 1870.

Minor, contract by—Delay in repudiating—Ratification.

Baboo *Grish Chunder Ghose* for the appellant.

Baboo *Rajender Nath Bose* for the respondent.

THE judgment of the Court was delivered by,

PHEAR, J.—We think that the decision of the lower Appellate Court cannot be supported.

The plaintiff claims through two roots

* Special Appeal, No. 2604 of 1869, against the decree of the Judge of Sylhet, dated the 24th August 1869 affirming a decree of the Munsif of that district, dated the 30th April 1869.

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of title, and the defendant sets up a prior right through the same sources.

It is not quite clear whether or not the plaintiff has proved the conveyances on which he relies. We think, however, that the decision of the Judge to the effect that the defendant has failed to make out his two lines of title is incorrect, at any rate as regards one of them.

It appears to us that there has been no real question below with regard to the defendant's conveyances. One portion of the property was conveyed to him by Surroop, another by Bishen Dassee.

But the Judge finds as a fact that Surroop was a minor, and upon that ground holds that the conveyance by him to the defendant is inoperative.

This we think is erroneous. A conveyance by a minor is so far imperfect that it may be avoided by the minor when he comes of age. But, unless after coming of age, he promptly does some act to repudiate the contract, it must be taken against him that he ratifies it.

It does not appear that there is a particle of evidence on the record tending to show that Surroop, when he came of age, or as soon thereafter as reasonably might be, took steps to repudiate the conveyance to the defendant. Of course, he could not honestly disavow his own act, unless he offered at the same time to refund the purchase-money.

Now nobody seems to have thought of his doing this. Even the plaintiff who sues on a conveyance from him, and therefore stands upon his right, and no other, never proposes to pay back to the defendant the money which he gave for his purchase. And the Judge, when he gives a decree in favor of the plaintiff, allows him to have the full benefit of the property without making any awards whatever to the defendant for the loss of the money which he paid some three and a half or four years before suit for the property.

I need not say that this of itself is inequitable. It would be manifestly unjust that Surroop should get back the property, and at the same time keep in his pocket the money for which he sold it; and there is nothing certainly in this case by reason of which the plaintiff ought to stand in a better position than Surroop. I have no doubt that the Court was bound in equity to treat the sale of Surroop to the defendant as a valid sale. If Surroop was of age at the time of the sale, he could not afterwards recall his act. If he was a minor which, on the finding of the Judge himself, is at any rate doubtful, everything in the case, including the mode in which the suit is brought, goes to prove that he ratified that sale, and he has certainly taken no step whatever to repudiate it. With regard to the property which the defendant obtained from Bishen Dassee, the Judge was not correct in holding that the production of the *kobala* was necessary to enable him to determine the issue between the parties in favor of the defendant.

It appears that the *factum* of sale was not really disputed, but the plaintiff only urged that the sale was a sale by a Hindu widow under circumstances which did not bind the reversionary heir. The Judge ought to have confined himself to the enquiry whether the sale by Bishen Dassee was valid as against the reversionary heir. He ought not to have gone behind the only question which the parties raised, to enquire whether there was such a sale or not.

We think that, so far as regards the property which was the subject of the conveyance of Surroop, the decision of both the lower Courts must be reversed, and the plaintiff's suit must be dismissed.

But as regards the property which was the subject of the conveyance from Bishen Dassee the decision of the lower

Long inaction must be held to be a ratification of the contract—*Ishan Chunder Mozoomdar* v. *Sreekant Nath* (1).

(1) 9 W. R., 110.

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Mr. *Woodroffe* in reply.

The judgment of the Court was delivered by

MITTER, J.—The main questions which the lower Courts had to determine in this case were, firstly, whether there was any legal necessity to justify the guardian of the plaintiff's vendor in mortgaging the disputed property to the defendants; and secondly, whether the plaintiff's vendor, Chundernath, after arriving at majority, had, previous to the sale to the plaintiff, ratified the said transaction of mortgage.

With reference to the first question, the lower Appellate Court has found as a fact upon evidence that the case of necessity set up by the defendants, special respondents, in their written statement, was not proved to its satisfaction. This finding has been impugned by the special respondents under the provisions of s. 348, Act VIII of 1859. But as it is a finding of fact based upon a full consideration of the evidence on the record, and as we do not find any error in law, either in the procedure or in the investigation of the case, we cannot interfere with it in special appeal.

Upon the second question, the lower Appellate Court has come to the conclusion that the plaintiff's vendor, having failed to take any steps to repudiate the defendants' title under the mortgage within five years after the date of his arrival at majority, it must be presumed that he has ratified that title.

We are of opinion that, under the admitted circumstances of this case, this conclusion is erroneous in law. We do not mean to say, that long silence on the part of a person, arrived at majority, to impugn the validity of a transaction between his lawful guardian during his minority and a third party, cannot be treated as evidence of ratification, merely because that silence falls short of the period prescribed by the Statute of Limitation; nor do we mean to say that a Court of Justice, whose duty it is to determine a question of fact, cannot, in any case, infer a

Appellate Court must be reversed, and the case must be remanded to the lower Appellate Court for trial of the issue, whether or not the consideration for that sale was such as to make the sale binding as against the reversionary heir; or, in the alternative, whether the then next reversionary heir consented to the sale.

We think that the plaintiff must pay the defendant one-third of his costs in both the lower Courts and in this Court. The remaining costs will abide the result of the inquiry on remand.

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ratification from the fact of such silence. But after a careful consideration of all the arguments and authorities brought to our notice, the conclusion we have arrived at is that mere silence for a period short of that prescribed by the law of limitation cannot by itself constitute a valid ground for rejecting a person's claim to set aside an alienation improperly made by his guardian without any valid necessity. Such a course would be tantamount to the establishment of a new rule of limitation not sanctioned by the Statute, and it is therefore clear that mere delay in repudiating an alienation like that above described can be treated only as evidence of ratification, if such ratification is pleaded, and in no other light.

Let us now proceed to see how the lower Appellate Court has dealt with the delay imputed in this case to the plaintiff's vendor, that delay being considered merely as a matter of evidence bearing upon the question of ratification. The learned Judge admits in his decision that, as soon as the plaintiff's vendor arrived at majority, he sold his rights in a moiety of the lands mortgaged to the defendants to the plaintiff, and in the kobala executed for that purpose, he, the plaintiff's vendor, expressly repudiated the title of the defendants and characterized the possession held under that title as wrongful. But the learned Judge goes on to say that the defendants were not parties to this kobala, and as neither the plaintiff nor his vendor gave to the defendants any notice of their intention to repudiate the mortgage transaction in question within five years and upwards from the date of its execution, it must be held that that transaction has been sufficiently ratified by the plaintiff's vendor, and therefore as a matter of law by the plaintiff himself, who cannot claim to stand in a higher position than his vendor.

But this reasoning appears to us to be erroneous. In the first place it seems to be clear that there is no law which requires a person who has arrived at majority to give any notice, express or implied, to the person who holds his property under an invalid alienation made by his guardian during his minority; nor do we find any law providing that a suit of this description cannot be maintained without the performance of some preliminary acts on the part of the minor, or of those who claim under him.

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In the next place, it is clear from the foregoing remarks that the question which the Judge had to try was, whether the title relied upon by the defendants had been ratified by the plaintiff's vendor, there being no allegation in this case that it had been ratified by the plaintiff himself; and it may be conceded that in dealing with this question, the Judge had every right to draw any legitimate inference he thought proper from the conduct of the parties, such as the delay on the part of the plaintiff or of his vendor in taking proceedings against the defendants. But in this case, it is admitted that there is no direct evidence of any positive act of ratification. There may be cases in which mere silence for an undue length of time may be taken as proof of such an act. But in this case, it is clear upon the learned Judge's own showing that there was something more than silence, namely, the express repudiation of the defendants' title in the kobala executed in favour of the plaintiff by his vendor immediately after the latter's arrival at majority. That kobala is, at any rate, evidence of the declared intention of the plaintiff's vendor to institute proceedings against the defendants, at least of an intention existing on the date of its execution, and there is therefore direct evidence not of ratification, but of positive dis-affirmance or repudiation. It is not even alleged that there has been any ratification by the plaintiff since that date, the acts of his vendor done subsequently to the date of his purchase being of course rejected as not binding against him.

In the above view, we reverse the decision of the Judge, and restore that of the first Court with all costs to be paid by the defendant, mortgagee.

Appeal allowed.