

APPELLATE CIVIL,

Before Mr Justice Markby and Mr. Justice Morris.

MAHOMED ARSAD CHOWDHRY (ONE OF THE DEFENDANTS) v. YAKOOB
ALLY (PLAINTIFF).*

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June 8.

*Limitation—Minor, Purchaser from—Representative—Act IX of 1871
s. 7—Act XIV of 1859, s. 11.*

Whatever may have been the effect of s. 11 of Act XIV of 1859, as to extending the privilege given to a minor to his representative, s. 7, the corresponding section of Act IX of 1871, limits the privileges to the minor himself and his representative after his death; and therefore a purchaser from a minor cannot claim the benefit of that section.

SUIT to recover possession of an elephant or the value thereof and damages.

The plaintiff alleged that the elephant originally belonged to one Nowab Ali Chowdhry, upon whose decease in F. S. 1274 (1866-67), it descended to his wife the third defendant, who was a minor at the time; that in the same year, on the 2nd of Magh (22nd January 1867), the first defendant, Mahomed Arsad Chowdhry, wrongfully possessed himself of the animal, and that the third defendant on attaining her majority in F. S. 1280 (1873), sold it to the plaintiff, who, on the 25th of June 1874, instituted the present suit for recovery thereof.

The first defendant, who alone entered appearance, pleaded *inter alia*, that the action was barred by lapse of time.

The Subordinate Judge overruled this objection, and decreed the plaintiff's claim.

The defendant Mahomed Arsad Chowdhry appealed to the High Court.

Baboo Joy Gobind Shome, for the appellant, contended that the cause of action in this suit accrued on the 2nd of Magh 1274 or the 22nd of January 1867. The suit would be barred, if the plaintiff's vendor, the third defendant, was a major at the time

* Regular Appeal, No. 322 of 1874, against a decree of the Subordinate Judge of Zilla Sylhet, dated the 14th September 1874.

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Baboo Kally Mohun Dass, for the respondent, contended that s. 11 of the old Act, (Act XIV of 1859), which made no restriction as to the death of the minor to entitle his representative to the privilege should be looked at to show the intention of the Legislature as expressed in s. 7 of Act IX of 1871. It is extremely improbable that the Legislature ever intended that, whilst a minor plaintiff should be entitled to exclude the period of his disability from the time in which he might bring his action, a purchaser from him should be debarred from availing himself of his vendor's privilege, otherwise it would impose a serious burden on the freedom of contract.

Baboo Joy Gobind shome was not called upon to reply.

The judgment of the Court was delivered by

MARBY, J. (who, after stating shortly the facts of the case, continued) :—The date when the elephant was taken out of the possession of the then owner, was the 2nd Maugh 1274 (22 January 1867). And whatever be the exact nature of the cause of action which is put forward in this suit on the part of the plaintiff, it is admitted that the suit would be barred by the law of limitation, unless the plaintiff can bring himself within the provisions of s. 7, Act IX of 1871.

It is not contended that the plaintiff himself is a minor, but he seeks to take the benefit of that section as purchaser from a person who was a minor when this cause of action accrued. He is in fact the purchaser of the minor's claim to the elephant, and of her claim to damages on account of the elephant having been taken out of her possession. Now by s. 4 of the Limitation Act (Act IX of 1871), every suit must be brought within

the time specified in the schedule, unless there is something in the provisions in s. 5 to 26 of the Act itself, which absolves the plaintiff from that necessity.

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It is not a question therefore, as is argued before us, whether by the words of s. 7 the purchaser from the minor is excluded, but whether he can bring himself within the provisions of that section. The general words of s. 4 are sufficient to exclude him unless he can do this. Now, the first part of the section says:—"If a person entitled to sue, be at the time the right to sue accrued, a minor, or insane, or an idiot, he may institute the suit within the same period after the disability has ceased, or (while he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefore in the third column of the second schedule hereto annexed."

That is a right clearly personal and restricted to the minor himself. Then the third clause goes on to say:—"When his (the minor's) disability continues up to his death, his representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule."

The minor, therefore, or his representative in interest after his death, has a special period allotted to him for bringing the suit. There are no words whatsoever in s. 7, which would give to any other person, in whatever way he might happen to be connected with the minor, any other period for bringing the suit than that specified for ordinary persons. That this is the true construction of this section also appears to be clear, if we compare the words of s. 7 of the present Limitation Act with the words of s. 11 of Act XIV of 1859. There the words are "If at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time &c."

There is nothing there which in express terms limits the term "representative" to a representative at the death of the minor. Whether upon the true construction of s. 11 the word "representative" can be extended so as to include a purchaser from the

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minor suing in his lifetime, is a matter which of course we are not at present concerned to consider. No case has been shown to us, in which that section has been so extended. But however that may be, it seems clear that the intention of the Legislature was to make the language of the new Act more strict than the language of the old Act, and to limit the advantage of that section to the minor himself and to his representative after his death.

Some argument was addressed to us as to the improbability of the Legislature debarring the purchaser from a minor from any advantage which the minor himself might have. That is not a matter which can in any way enter into consideration of the construction of a section the language of which is not in any way ambiguous. But so far as this particular case is concerned, I think we may fairly say that we have no hesitation whatsoever in applying the law of limitation to the claim of the plaintiff. The claim is one which we should by no means encourage, even supposing we do not go so far as to hold that it is one which is contrary to the policy of the law, and therefore void. It is quite clear that it was a purchase of a very speculative kind and it is by no means improbable that, what is really meant to be tried under the allegation of this purchase, is some ulterior claim to more substantial part of the property of the minor. Therefore upon this ground of limitation alone, and without entering into any other portion of the case, we hold that the claim of the plaintiff is barred. But as there is a possibility of further litigation, we think it right to add that we express no opinion whatsoever whether the facts have been rightly found by the Court below. On the contrary, we feel bound to say that the investigation of facts in this case has not been in our opinion by any means satisfactory

The judgment of the lower Court is reversed, and the suit dismissed with costs in this Court and in the Court below.

Appeal allowed.
