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were seeking possession for the first time under his deed of sale, and the question is not merely one as to the effect to be given to the deed as against a deed of later date registered under Act XX. of 1866. I do not think that section 50 of Act XX. of 1866 is to be construed as vitiating all titles acquired prior to the passing of that Act, unless the instruments, on which they rest, are registered under section 100. Had such been the intention, registration of old deeds would have been made compulsory, and it would have been declared expressly that, unless registered, instruments registered under Act XX. of 1866 should take effect before them. I think that section 50 must be read as applying to instruments, the registration of which is optional under section 18, but not as applying to instruments registered under section 100.

I think, therefore, that this appeal ought to be dismissed with costs.

BAYLEY, J.—I concur in the above judgment, and the reasons for it. The transaction took place under the old law. I do not think the deeds then executed can be set aside if *bonâ fide* in every way, and supported by long possession as this is. I also would dismiss this special appeal.

Before Mr. Justice Loch and Mr. Justice Glover.

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Limitation—Relinquishment of Jote by Minor's Guardian—Act VIII. of 1859, *s.* 348.

A. sued B. to recover possession of a hereditary jote, of which he alleged he had been dispossessed by B., during his minority. B. raised the defence of limitation, and relinquishment by A.'s grandmother and guardian. The Moonsiff held, that the suit was not barred, on the ground that it had been brought within 3 years from the date on which A. had attained his majority, but decided against A. on the merits. On appeal, the question of limitation was not raised, but on the merits, the Judge also found against A.—On special appeal by A., B. took an objection under section 348 of Act VIII. of 1859, that A.'s suit was barred. *Held*, that B. could not take the objection at that stage. Also *held*, that to make the relinquishment, if any, valid against A., it ought to have been shown that it was for A.'s benefit. Decision of the lower Court reversed.

M. Muniruddeen v. *Mohamed Ali* (1) distinguished.

* Special Appeal, No. 2809 of 1867, from a decree of the Judge of Berhampore, affirming a decree of a Moonsiff of that district.

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THE plaintiff sued to recover possession of a mourasee jumma, from which he alleged that he had been dispossessd, during his minority, by the defendants. He alleged that, on the death of his father, in 1254 (1847), Tarasundari, his grandmother and guardian, being nnable to manage the property in question, made it over in trust to the charge of the defendant, Chandra Sekhar Chatterjea, who undertook to pay the rents to the zemindar, and to give the balance of profits to her; that Chandra was, in 1257 (1850), ousted by the other defendants, who still held the lands in dispute; and that the plaintiff had attained his majority in Chait 1270 (1863.)

The defendant, Mathuranath, alleged that the plaintiff had never enjoyed the profits of the disputed jote; that his brother's son, Kailash, had taken a lease of these lands from the zemindar, in 1257 (1850), and had remained in enjoyment of the same till his death in Aghran 1267 (November or December 1860), when he (Mathuranath) obtained possession under Kailash's will.

The defendant, Khudamani (Kailash's widow), supported, the allegation of the defendant, Mathuranath. She stated that on the relinquishment of the lands in dispute by Tarasundari, her husband, Kailash, had taken a lease of the jote from the zemindar, and held it jointly with the defendant, Mathuranath.

Limitation was also set up in bar of the plaintiff's claim. The defendants did not, however, deny the hereditary right of the plaintiff to the tenure in dispute.

The defendant, Chandra Sekhar, put in no written statement, but was called as a witness by the plaintiff, and in his deposition supported the case of the plaintiff.

The issues framed were:

1*st*. Whether or not the plaintiff's claim was barred by limitation?

2*nd*. Whether there was a dispossession as alleged by the plaintiff, or a relinquishment as contended by the defendant?

The Moonsiff found that the plaintiff's claim was not barred, on the ground that the suit was brought within 3 years after the plaintiff had obtained his majority; but on the merits he decided the case against the plaintiff. He found that the plaintiff's grand-

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mother had never given the disputed land in trust, as alleged, "for if it were true that Chandra Sekhar held it in trust for the plaintiff, then his grandmother would surely have sought redress in the event of ouster as alleged by the plaintiff." He also found that no rents had been paid by Tarasundari for the jote; that a lease had been granted by the zemindar to Mathuranath and his nephew, Kailash; that, therefore, plaintiff was not entitled to recover possession of the jumma, because whatever right or interest he might have had in it had been extinguished by the relinquishment of Tarasundari, and also because a jummayi tenure could not be preserved *in statu quo* without the payment of rent, and there was no evidence that Chandra Sekhar had paid rent for two years. He also held that it was for the plaintiff to establish dispossession.

On appeal, the Judge found that the alleged ouster was not proved; but that, through the neglect of the plaintiff's guardian, there had been, if not a formal, at least an implied, relinquishment of the jote, in consequence of the non-cultivation of the land as well as the non-payment of rent The Judge considered, on the authority of *M. Muniruddeen* v. *Mohamed Ali* (1) that the abandonment of cultivation and the non-payment of rent amounted to a formal relinquishment. He also held, that a relinquishment on the part of Tarasundari was binding on her minor grandson, the present plaintiff. On these grounds, the Judge dismissed the appeal. In this appeal, the defendants did not raise the defence of limitation which had been decided below in favour of the plaintiff.

Both parties appealed against this decision;—the defendant, under section 348 of Act VIII. of 1859, on the ground that the plaintiff was barred by limitation, inasmuch, as not being a zemindar, he attained majority at the age of 15, whereas the present suit was not brought till the year 1273 (1866), when the plaintiff was 21 years old.

Baboo *Krishna Sakha Mookerjee* for appellant.—The plaintiff was admittedly a minor till Chait 1270 (March or April 1863),

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and this suit was instituted within 3 years of that date. His rights cannot, therefore, be affected by the adverse possession of the defendants commencing during the period of his disability. The authority relied on by the Judge does not apply to the circumstances of the present case. The fact of relinquishment of the jote by the plaintiff's grandmother was not proved, and even if it were, her reliquishment could not bind the plaintiff.

Baboo *Mohini Mohan Roy* for respondents.

The judgment of the Court was delivered by

GLOVER, J. (After stating the facts.) We have no hesitation in rejecting this cross appeal. The objection was never before taken at any stage of the proceedings, and the plaintiff has now been much unfairly taken by surprise. The rulings of this Court, which lay down that limitation being a quesuion bearing on jurisdiction may be taken up at any time whether pleaded or not, refer to cases where the defect is patent on the record and not to those which would require further investigation to ascertain whether there was a defect or not The plaintiff appeals on the ground that his grandmothor did not relinquish the jote, and that if she had done so, her act of relinquishment connot bind him. And it is contended on the other side, that as the plaintiff failed to prove that Chandra Sekhar had been in possession as his trustee, and had been ousted by the defendants, the case should have stopped there ; that no adjudication on the question of relinquishment by the grandmother was necessary.

This last contention is, as it appears to us, unsound. It is not denied that the land in dispute was the plaintiff's hereditary jote, and it was, therefore, very material to try the issue, whether or no Chandra Sekhar had been but in possession, by the grandmother. The plaindiff, being a minor at the time, would not be affected by Chandra Sekhar's possession, and his failure to prove that his grandmother had made over the land to that individual ought not to have injured his case. But were it otherwise, as the Judge did not decide the case solely on this failure to prove Chandra Sekhar's prossession but adiudicated

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also on the defendant's pleas, the plaintiff would in any case be entitled to have the Judge's decision taken as a whole, and to appeal against that part of it, which made the act of his grandmother binding upon him.

The Judge, in coming to this finding, has mainly relied upon a decision of this Court, *M. Muneeruddeen* v. *Mahomed Ali* (1) in which it is laid down that "when a cultivating ryot goes away from the land which he has occupied, and neither cultivates nor pays rent for it, he has wholly relinquished the land;" and he finds that as the plaintiff would have been bound by the act of his grandmother had she formally relinquished the jote, so he is equally bound, under this precedent by her informal relinquishment. No doubt, as in the case quoted, a ryot going away would altogether relinquish his land, but here the question is not whether or no the grandmother relinquished the jote, but whether her doing so binds her grandson, and we are not disposed to admit that it did so. The plaintiff was a minor at the time; and to make the relinquishment valid, it must be shown that it was for the minor's benefit so to make it. Nothing of this kind has been shown us, nor has the plea ever been raised, and *primâ facie*, to give up an hereditary jumma would be the reverse of beneficial to a minor.

We think, therefore, that we ought to reverse the decision of the lower appellate Court with costs, and decree that the plaintiff recover possession of his hereditary land from the defendants.

Before Mr. Justice Loch and Mr. Justice Glover.

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JAYANARAYAN SINGH *v.* MATILAL JHA.*

Act X. of 1859—*Suit to Enhance—Excess lands—Trespasser.*

A., the holder of an independent istemrari tenure lying in B.'s zemindary, lets it to C., who under cover of his lease encroaches upon the zemindary lands. *Held*, that there was no implied contract of tenancy between C. and B. and B. could not sue C. for rent on account of the excess lands.

* Special Appeal, No. 1945 of 1867 from a decree of the Judge of Bhagulpore, reversing a decree of the Deputy Collector of that District

(1) 6 W. R., 67.