It cannot be doubted, but the object of Section 54, Act XI. of 1859, was to protect, not every encumbrance which might be set up, but only *bonâ fide* encumbrances executed in contemplation of an impending sale, or in fraud of a possible purchaser; and that, where surrounding circumstances suggested such creation, it would be for the party setting up the encumbrance to establish its *bonâ fide* character, which he could readily do if it were really of that complexion.

Applying these principles to the present case, the Courts below should have enquired into the following points:—

1stly.—Was the pottah Joykishen's deed?

2ndly.—Was it executed at the time stated, *bonâ fide*, with the intention of immediately passing a substantial interest to the lessee, his son?

3rdly.—Was this assignment intended to operate in fraud of a foreseen possible auction-purchaser?

Another point appears not free from doubt, and, therefore, calling for enquiry, namely,

4thly.—To what extent, looking at Joykishen's relations with his co-sharers, could this pottah constitute an encumbrance on the plaintiff's purchase within the meaning of the Act?

Now, looking at the relations of all the parties to this suit, and to the continual occurrence in this country of family arrangements made for the purpose of defeating the legal consequences of acts and omissions, we have no hesitation that there were points on which it was for the defendant to satisfy the Court; in other words, that the burthen of proving the *bonâ fide* encumbrance lay on him. The Judge, on the other hand, we think, as contended by Mr. Allan, finding a mere *factum* of a pottah, has thrown it entirely on the plaintiff to prove the fraud. It seems to us more than probable that, if he had looked at the case in the light in which we now set it before him, he might have come to a different conclusion. At any rate, it will be his duty now attentively to re-consider the case in that light.

We, therefore, reverse the decision of the Lower Appellate Court, and remit the case with directions to re-hear it as above indicated. The costs will be costs in the suit.

The 4th January 1866.

Present:

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

Minors—Section 2, Regulation XXVI., 1793—Proprietors of estates paying Revenue to Government—Necessaries—Power of Minor to authorize third party to settle an account.

Case No. 300 of 1865.

Regular Appeal from a decision passed by the Judge of Dacca, dated the 12th August 1865.

Bykuntnath Roy Chowdry (Defendant), *Appellant,*

versus

Mr. N. P. Pogose (Plaintiff), *Respondent.*

Baboo Sreenath Doss for Appellant.

Mr. C. Gregory and *Baboo Dwarkanath Mitter* for Respondent.

Suit laid at Rupees 3,801-9.

Section 2, Regulation XXVI., 1793, extends the term of minority of proprietors of estates paying revenue to Government, from the end of the 15th to the end of the 18th year, in respect of all acts done by such proprietors, both as to matters connected with real estate, and matters of personal contract.

Minors have a qualified power of contracting, and an implied or expressed contract for necessaries is binding absolutely on a minor.

As a minor cannot himself, by reason of insufficient capacity for business, state and settle an account so as to be bound thereby, so neither can he authorize another party to do for him that which he cannot do himself.

THE plaintiff in this suit, Mr. N. P. Pogose, sues the defendant, Bykuntnath Roy Chowdry, a zemindar of Zillah Mymensing, for a sum of money due on three bonds executed by him: one for 1,450 rupees, dated 6th Aghran 1260, another for 550 rupees, dated 30th Aghran of that year, and a third for 250 rupees, dated 29th Pous of the same year, and for 680 rupees under an account stated and signed by Bindabun Chunder Mojoomdar, the gomashtah of the defendant.

The plaintiff alleges that, in consequence of disputes between the defendant and his mother regarding the property left by his father, Gokoolnath Roy Chowdhry, having risen to a great height, he left his house, and went to Bagoonbary to secure the assistance of Khajah Abdool Gunee, the zemindar of Baliati, and several other persons, residents of Dacca; but, having failed in all these places, he, defendant, with Bindabun Chunder Mojoomdar, his well-wisher Prannath Gossain, and his spiritual guide

Issuchunder Gossain, came to him, plaintiff, and made him many entreaties; that, upon this, he, without taking any writing from him, but merely out of kindness to him whom he thought a man of noble descent laboring under difficulties, assisted him; that the amount claimed was spent for his maintenance and other useful purposes, and, as he, plaintiff, cannot recover the sum in any other way, he brings the present action.

The defendant in his statement avers that, during his minority, he, in consequence of misunderstandings with his mother, went to Dacca; that, after he had arrived there, plaintiff persuaded him to carry on law-suits with his mother with a view of forwarding his own ends, and procured his signature to certain bonds; that, when he signed them, he was a minor and incapable of understanding the effect of what he was doing, and therefore cannot be liable under them; that Bindabun Chunder Mojoomdar was never his servant, but a creature of the plaintiff, and plaintiff could obtain from him any account he pleased; that on no account can he be justly made liable for the present demand.

The Judge of Dacca, who tried the case, remarks as follows: "The execution of "the bond has been proved by the evidence "of the witnesses. They were also ad- "mitted by the defendant himself before "the Magistrate, and their execution is "not now denied, the only plea being "minority at the time of their execution. "The plea is wholly untenable. The age "for a Hindoo male to emerge from minor- "ity as regards civil liability (with ex- "ception of the charge of a landed estate "paying revenue to Government) is 15 "years, and it is scarcely pretended that "the defendant was not more than 15 years "of age at the time he executed these bonds "and received the money from the plaintiff. "The evidence of plaintiff's witnesses proves "that defendant was over 15 then, and the "*jumno putro* said to have been drawn out "at the time of his adoption places it beyond "doubt, copy of it having been placed for "the defence.

"In respect of the money due on the "account for which there is no bond, I do "not consider that the plaintiff has shown "that Bindabun was authorized to sign any "account so as to make it binding on the "defendant, but I do think that the "evidence in support of plaintiff's case is "sufficient to prove that the money was "advanced by the plaintiff, and that the "defendant is liable for it. The defendant "was summoned by the Court to give evi- "dence, but refused to attend, alleging that "he was afraid of being arrested under a "decree against him by another party. "There is no question raised by the defence "regarding any item in the account, which "is contested only on the same ground as "the bonds, *viz.*, minority, and that it was "signed by Bindabun, who is alleged to be a "servant of plaintiff instead of defendant. "This man gave his evidence in a straight- "forward manner, and produced his sunnud "of appointment in defendant's service; "whilst it seems to me that the evidence of "the witnesses for the defence, brought to "prove that Bindabun was a servant of "Pogose, the plaintiff, seemed open to grave "suspicion. Being of opinion, therefore, "that the defendant is not protected by "minority, I decree the suit for the princi- "pal in full with interest on the amount "covered by the bonds, and costs, with in- "terest on the total amount of the decree "from this date."

From the decision passed by the Judge, an appeal has been preferred to this Court by the defendant below. He has urged the very same points which he has urged unsuccessfully in the Court of first instance. The defendant is admittedly a proprietor of an estate paying revenue to Government, and he admittedly had not reached the end of his eighteenth year, and was, in fact, a little over 15 years of age when he executed the bonds on which the present suit is mainly based. The question then arises, is he bound by his acts; or, in other words, do the terms of Section 2, Regulation XXVI. of 1793, extend the period of minority in the case of proprietors of estates generally to the end of the eighteenth year, and prolong the period of legal non-liability in all matters to that age; or, as held by the Judge, do they merely extend minority in matters connected with the minor's real estate, leaving him in all matters of personal contract in just the same position in which he was before the law above cited was enacted, *viz.*, a minor only to the end of the 15th year?*

* Section 28, Regulation X. of 1793.

We think that the question admits of one answer only. Minority is a legal personal disability. It may be placed arbitrarily at one age or another; but having been determin-

ed to extend, either generally or as to a particular class, up to a certain age, it is accompanied by complete legal disability, unless the law has expressly declared otherwise. Now, the terms of Section 2 of Regulation XXVI. of 1793 are to the following effect: "The Rule contained in "Section 28 of Regulation X. of 1793, which "limits the minority of Hindoo and Maho- "medan proprietors of estates paying re- "venue to Government to the expiration of "the fifteenth year, is hereby rescinded, and "the minority of such proprietors is declared "to extend to the end of the eighteenth year." These words clearly extend the term of minority to a class of persons, but do not limit it to a class of subjects; and we have no doubt, therefore, that they extend the legal disability attending minority to any act which a proprietor of estates under the full age of 18 years might happen to be engaged in. Moreover, the reason of the thing supports the law as we read it; for it is unnecessary to remark at length as to the unreasonableness of finding the same person a minor as to some transactions, and a major as to others, and liable on account of some, non-liable on account of others.

As, then, we are of opinion that the defendant was a minor at the time of the execution of the bonds upon which this action is mainly based, it would ordinarily have decided so much of the case as is covered by them; but the plaintiff has attempted in his written statement to make out that the bonds were given for necessaries. Now, there can be no doubt that infants have a qualified power of contracting, and that an implied or express contract for necessaries is binding absolutely on an infant. But we have no evidence before us showing that the bonds were given on account of necessaries supplied or executed on account of expenses incurred for the minor's benefit and advantage; and in its absence, and looking to all the facts of the case, we are clearly of opinion that the bonds were executed by the minor under circumstances of very questionable propriety as far as the plaintiff is concerned.

As to the sum covered by the alleged account stated and signed by Bindabun Chunder, we agree with the Judge in thinking it not proved that Bindabun Chunder had any authority from the defendant to sign such an account, and to make him liable for it. Moreover, as the minor could not himself, by reason of insufficient capacity for business, state and settle an account so as to be bound thereby, neither could he authorize a party to do that for him which he could not do himself. But, undoubtedly, had plaintiff with reason laid out money in the purchase of necessaries for the minor, such money might be recovered from the latter in an action for money paid. Now, though this suit is not brought in this form, we should not have refused to decree to plaintiff any sum paid with reason on behalf of the minor, had we been convinced that he had supplied to him what the law considers necessary. That, however, we think, is not evident. We rather look upon the transactions involved in the present suit as a series of attempts on the part of plaintiff to wring from the youth, incapacity, and necessities of the defendant, monies which, under no circumstances, would the law assist him to recover. Under this view, we reverse the judgment of the Lower Court, and dismiss the plaintiff's suit with costs.

The 6th January 1866.

Present:

The Hon'ble F. B. Kemp and W. S. Seton-Karr, *Judges.*

Minority (of proprietors of estates paying Revenue to Government)—Construction of Regulation XXVI., 1793—Onus probandi—Mahomedan Law—Marriage and Legitimacy—Gifts.

Regular Appeals from a decision passed by Mr. J. R. Muspratt, Judge of Purneah, dated the 6th April 1865.

Case No. 158 of 1865.

Ranee Roshun Jahan (Plaintiff), *Appellant,*

versus

Rajah Syud Enaet Hossein (Defendant), *Respondent.*

Messrs. R. V. Doyne, G. C. Paul, and *C. Gregory* for Appellant.

Mr. R. E. Twidale, Baboo Kishen Kishore Ghose, and *Moonshee Ameer Ali Khan Bahadoor* for Respondent.

Suit laid at Rupees 8,32,068-15 as. 7g.

Case No. 178 of 1865.

Rajah Syud Enaet Hossein (Defendant), *Appellant,*

versus

Ranee Roshun Jahan (Plaintiff), *Respondent.*