

1894

SITANATH
PANDA
v.
PELARAM
TRIPATI.

That being so, the decree of the lower Appellate Court must be reversed, and that of the first Court restored with costs in both the Appellate Courts. The finding of the Appellate Court being that the defendants 1 to 3 purchased the *jote* the decree will be against them, and the suit will be dismissed as against defendant No. 4.

Appeal allowed.

J. V. W.

Before Mr. Justice Ghose and Mr. Justice Gordon.

1894

June 26.

SHAM CHARAN MAL (PLAINTIFF) v. CHOWDHRY DEBYA SINGH
PAHRAJ, MINOR, BY HIS GUARDIAN CHOWDHRY SHAM
SUNDER ROY (DEFENDANT).^o

Minor—Necessaries—Bond, registered, executed by minor—Registration of bond by minor—Limitation to suit against a minor on a registered bond executed by him for necessaries—Contract Act (IX of 1872), section 68—Registration Act (III of 1877), section 35.

On the 20th April 1886 a sum of money was advanced by A. to a minor who executed a bond in respect thereof and duly registered the same. The money was required by the minor to provide for his defence in certain criminal proceedings then pending against him on a charge of dacoity and was used by him for that purpose. On the 18th June 1892, A. instituted a suit against the minor for the amount due on the bond. It was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable to A. for the amount advanced; that it was not advanced for "necessaries;" that he was not liable under the bond, and that the fact of it being registered could not help the plaintiff, and consequently, even assuming that the money was required for "necessaries," the suit was barred by limitation being brought more than three years after the advance was made.

Held, that the liberty of the minor being at stake, the money advanced must be taken to have been borrowed for necessaries within the meaning of section 68 of the Contract Act.

Held, further, that there being nothing to show that the minor *appeared* to be such to the Registrar at the time of registration so as to enable the Registrar to refuse registration under section 35 of the Registration Act, and the concealment of the fact of the executant's minority both by himself and by the plaintiff from the Registrar not amounting to fraud so as

^o Appeal from Appellate Decree No. 757 of 1893, against the decree of B. L. Gupta, Esq., District Judge of Cuttack, dated the 1st of February 1893, reversing the decree of Babu Bolloram Mullick, Subordinate Judge of that district, dated the 22nd of August 1892.

to invalidate the registration proceedings as against the minor, the Registrar had in no way violated the law relating to the registration of documents, and the bond must be taken to have been duly registered.

Held, also, that in such a case the bond could not be ignored and treated as non-existent, being the basis of the suit, and that on its being proved to have been executed by the minor in respect of money advanced for necessities, effect must be given to the fact of registration and the suit was not barred by limitation, and that the plaintiff was entitled to a decree.

THE plaintiff instituted this suit on the 18th June 1892 to recover from the defendants Rs. 2,478 alleged to be due on a registered bond dated the 20th April 1886. He alleged that the defendants were being prosecuted for dacoity and that the money was borrowed for the purpose of their defence. Chowdry Debya Singh Pahraj, who was sued as a minor, was, the plaintiff admitted, a minor at the time he executed the bond, but it was alleged that his mother and certificated guardian, who had since died, had admitted the amount to be justly due from the minor under the bond, and that the money had been borrowed for the benefit of the minor and for necessities.

This suit was only contested on behalf of the minor and one other of the defendants. The latter pleaded that the money was borrowed for the minor, and contended that he was not liable, though he admitted the execution of the bond. The Subordinate Judge held that he was liable and no appeal was preferred against that decision.

On behalf of the minor it was contended that he could not be liable under the bond; that the whole amount of the money borrowed was not required for the purpose of the defence and that the suit was barred by limitation.

The execution of the bond by the minor was admitted at the hearing, and the Subordinate Judge found that there was ample evidence to show that the money advanced on the bond was paid before the Registrar and advanced to the infant for the purpose of his defence in the criminal proceedings; that the money was not taken by the infant's guardian, and that there was no evidence to show that the plaintiff was aware of the guardianship at the time the advance was made. He further held that money was undoubtedly used for the purpose of the defence, and that it was quite unnecessary for the

1894

SHAM
CHARAN MAL
v.
CHOWDRY
DEBYA SINGH
PAHRAJ.

1894
 SHAM
 CHARAN MAL
 v.
 CHOWHRY
 DEBYA SINGH
 PAHRAJ.

plaintiff to prove that the whole of the amount advanced was so used. It was urged before the Subordinate Judge that a contract made by a minor was *void* under the Contract Act and not merely *voidable*, and he was referred to Addison on Contracts, pp. 15, 1024 and 1028; Story on Contracts, pp. 131-138; Pollock on Contracts, pp. 32-34; *Bykuntnath Roy Chowdhry v. Pogose* (1) and *Watkins v. Dhunoo Baboo* (2); but the Subordinate Judge held that such contracts were not void under the Act, and quoted *Muhamed Arif v. Saraswati Debya* (3) as an authority for that proposition, and came to the conclusion that the contract was binding on the minor under section 68 of the Contract Act, the advance having been made for necessaries.

On the question of limitation the material portion of the Subordinate Judge's judgment was as follows:—

"It appears that the plaint was filed after the expiration of three years but within six years from the date when the loan was payable. The bond apparently is a contract in writing registered within the meaning of Article 116, Schedule II of the Limitation Act, which prescribes six years as the period within which a suit based on it is to be instituted. It is contended, however, on behalf of the defendant No. 1 that as he was a minor when the bond was registered the registration was null and void, and therefore the bond was not a registered document to which Article 116 would apply. To determine the legal sufficiency of the contention it is necessary to examine the law and authorities in detail. I should premise at the outset that Article 116 does not turn upon the validity or otherwise of the registration of the contract therein referred to. It speaks of a contract which professes to have been registered, and the bond is on the face of it a registered contract. Regard being had therefore to the frame of the article, the question now raised would not be an open one for the purpose of deciding the plea of limitation.

"Turning to the Registration Act I find there is *nothing* to support the defendant's position. Under section 35 of that Act the registering officer 'shall refuse to register the document if the executant thereof appears to be a minor.' The necessary corollary from the above would be that if the executant does not appear to be a minor the registering officer shall register the document. Now there are no materials before me to show how defendant No. 1 appeared to the Sub-Registrar at the time of the registration of the document, and it is an open question if a Civil Court can exercise revisional jurisdiction over the Sub-Registrar's proceedings in the matter of that appearance for testing the validity of the registration of an instrument. No such jurisdiction is conferred on the Civil Court

(1) 5 W. R., 2.

(2) I. L. R., 7 Calc., 140.

(3) I. L. R., 18 Calc., 259.

by the Act. The Act nowhere provides for an appeal against an order or proceeding admitting an instrument for registration. It is in case of refusal to register that an appeal or civil suit is prescribed as a remedial measure. Further, the Act does not lay down any procedure as to how the question of minority may be disposed of under section 35. No *quasi-judicial* enquiry is prescribed, and therefore it cannot be said that in the present case the Sub-Registrar has acted in excess of his legitimate jurisdiction. That being so it is impossible to predicate of his proceeding as being illegal or irregular. This is a case where the registration certificate should carry with it its special finality, and it is not for the Civil Court to question it: *Sheo Shankur Sahoy v. Hirday Narain Sahu* (1), *Husaini Begam v. Mulo* (2). That certificate merely publishes the registered document to the world leaving its factum and validity open to contest at the instance of a party interested therein. The cases quoted on defendant's side do not establish the position contended for. In *Beni Mudhab Mitter v. Khatir Mondul* (3) and *Baij Nath Tewari v. Sheo Sahoy Bhagut* (4) the question hinged on the Sub-Registrar's territorial jurisdiction which does not arise in this case. *Muhammad Eweaz v. Birj Lal* (5) is wholly distinguishable. There out of three persons whose names appeared on the document as executants two admitted execution before the Sub-Registrar and the Judicial Committee held that against the absentee registration of the document was bad.

"In *Husaini Begam v. Mulo* (2) there was no admission of execution of the bond on behalf of the minor, and the case was decided in accordance with the principles laid down by the Judicial Committee above mentioned.

"In connection with this point the plea of fraud is raised. It is urged that as plaintiff caused the registration of the bond by representing that defendant No. 1 was an adult, when plaintiff knew the defendant was not so, it was a fraudulent representation, and therefore the registration was void. Now it is true that plaintiff was aware of the executant's minority at the date of registration, but there is nothing to show that he was present before the registering officer at the time and made any representation at all. He might have suffered defendant No. 1 to pass as an adult, and if there was passive fraud on plaintiff's part, defendant No. 1 chose to play an actively fraudulent part. There was certainly a league between them to defraud the Sub-Registrar, but it cannot be contended that thereby plaintiff has committed a fraud on defendant No. 1. The learned Vakil for the defence referred me to the definition of fraud in section 17 of the Contract Act. That definition abundantly shows that it is no fraud unless committed by a "party" to deceive "another party," and the Sub-Registrar was certainly not a "party" within the meaning of the definition. I would accordingly hold that the suit is not barred by limitation."

(1) I. L. R., 6 Calc., 25.

(3) I. L. R., 14 Calc., 449.

(2) I. L. R., 5 All., 84.

(4) I. L. R., 18 Calc., 556.

(5) I. L. R., 1 All., 465.

1894

 SHAM
 CHARAN MAL
 v.
 CHOWDHRY
 DEBYA SINGH
 PAHRAJ,

1894

SHAM
CHARAN MAL
v.
CHOWDHRY
DEBYA SINGH
PAHRAJ.

The Subordinate Judge accordingly gave the plaintiff a decree for the amount due on the bond against all the defendants. Defendant No. 1, the minor, appealed to the District Judge who reversed the decision of the lower Court as against the appellant. The material portion of his judgment was as follows:—

“The first question that arises in this case refers to the liability of the minor and the extent of that liability. Under sections 10 and 11 of the Contract Act, a minor is incompetent to enter into any contract, and his liability could arise only under circumstances covered by section 68 of that Act. But it has been held more than once by the Calcutta High Court that Act IX of 1872 effected no change in the law of contracts as regards minors whose liabilities must continue to be governed by the English law on the subject. It is enough to refer to the recently reported case of *Mahamed Arif v. Saraswati Debya* (1). The contract thus being not void but voidable, the appellant says: ‘I repudiate the contract and wish to avoid it.’ To this the plaintiff replies that the money was lent for a necessary purpose, and although irrespective of the bond the appellant would be liable to repay it by the common law and also under section 68 of the Contract Act, he cannot resist this suit and evade payment merely because he also executed a bond. This argument is valid, and it has been so held by the Court of Queen’s Bench in *Walter v. Everard* (2). The lower Court has found, and that finding has not been attacked in appeal, that the loan was taken for a necessary purpose, *viz.*, to pay the expenses of a criminal case in which all the four defendants were accused persons and in which three of them, including the minor, were committed to the Sessions on charges of dacoity, etc., of which they were acquitted. I hold that there was legal necessity.

“If, therefore, the deed was a single bond executed by the minor alone for necessaries, the case would present no difficulties. But the bond in this case is a joint one, and is a registered document. Hence questions relating to joint liability and limitation arise, the latter pending on the validity of the registration.

“In the case of *Walter v. Everard* cited above, Lord Esher said in his judgment: ‘It comes in the result to this—that a bond given by an infant for the price of necessaries does not prevent the obligee from recovering that price from him, if the bond is a single one, and it is not relied on simply as a bond. In the same way an infant can be sued upon a covenant by deed for the price of necessaries, but the case must be treated just as if there had been no deed. The Court must enquire whether the things in question were in fact supplied to the infant, and whether, according to the ordinary rule, that which was supplied was necessary. The Court must do exactly what it would do if there were no deed and what it certainly would not do. in the case of an ordinary deed not given by an infant.’

(1) I. L. R., 18 Calc., 259.

(2) L. R., [1891] 2 Q. B., 369.

“Now, if, in accordance with the principle so clearly and forcibly laid down above, we deal with the present case ‘as if there had been no deed’ the suit must be held to have been barred by the three years’ rule of limitation as against the minor under Articles 66 and 57 of the Schedule to the Limitation Act. Also if we deal with the case as if there was no bond, it is extremely doubtful if the minor can be cast in joint liability with the other defendants. In Addison on Contracts (6th edition, page 1,055) it is stated: ‘If one of several joint contractors was an infant at the time of making the contract, and has not, since the attainment of his majority and before commencement of the action, ratified the contract, he ought not to be made a defendant with his co-contractors.’ Authorities are cited in support of this proposition, but I am unable to say if in any of the cases cited the contract was for necessaries. It is urged emphatically on behalf of the appellant that if he be held liable only for the supply of necessaries, his liability should in equity be limited by the extent of his necessity; and that the plaintiff not having given any evidence of the extent of the necessity, his suit as against the minor should be dismissed, or at the best the minor should be charged only with a fourth part of the total amount claimed.

“I am disposed to hold that, if a suit against the minor jointly with the other defendants would lie in this case, the decree should also be joint, and I am, therefore, not prepared on this ground to disturb the judgment of the lower Court.

“Upon the question of limitation, however, I feel myself compelled to differ from the view taken by the learned Subordinate Judge. In my opinion, the plaintiff in this case is not entitled, as against the minor, to the extended period of six years allowed to holders of registered bonds under Article 116 of the Limitation Act as interpreted in *Nobocoomar Mookhopadhaya v. Siru Mullick* (1).

“It is after a careful consideration of the authorities, though not without some hesitation, that I have arrived at this conclusion, and I have done so on two grounds: Firstly, because the bond could not be enforced against the minor, except on the ground of necessaries, and the learned Judges of the Queen’s Bench have held not that the bond is valid as a bond, but that ‘it did not prevent the minor from being liable for the amount claimed’ in the same manner ‘as if there had been no deed.’ ‘The Court must do exactly what it would do if there were no deed.’ In other words, the Court must dismiss the suit as barred by limitation against the minor.

“My second ground is that the registration of the bond was no registration as against the minor within the meaning of the definition of the word ‘registered’ given in section 3 of the Limitation Act.

“Section 35 of the Registration Act (III of 1877) directs that where any of the executants to a deed appear to the registering officer to be a minor registration in regard to the minor should be refused. In the present case

1894

SHAM
CHARAN MAL
v.
CHOWDHRY
DEBYA SINGH
PAHRAJ.

1894
 SHAM
 CHARAN MAL
 v.
 CHOWDURY
 DEBYA SINGH
 PAHRAJ.

the lower Court has held, and I also hold, that both parties were aware of the minority of the appellant. The Subordinate Judge has found that 'there was certainly a league between them to defraud the Sub-Registrar, but it cannot be contended that thereby plaintiff has committed an act of fraud on defendant No. 1.' No; but it seems to me equally certain that a document, the registration of which was obtained by fraud practised on the registering officer, cannot be considered to have been 'duly registered' under the provisions of the Registration Act, or within the meaning of the Limitation Act. But apart from fraud, I consider that registration of a document executed admittedly by a minor is no registration as against him, for a minor is incompetent to admit execution before the registering officer, and that officer has no jurisdiction to record a minor's admission. This is not a case where a minor, by falsely representing himself to be of age, induces another person to enter into a contract with him. For in that case, even by the common law of England, the minor would be estopped from pleading minority afterwards. In the Full Bench case of *Baij Nath Tewari v. Sheo Sahay Bhagut* (1) even an imperfect compliance with the provisions of section 21 of the Registration Act was held to invalidate the registration. Much more so ought to be, I think, the case where one of the parties admitting execution was admittedly a minor at the time. It is unnecessary for me to discuss the other authorities cited on this point, because none of them bear on the question of minority, or other similar disability. I hold that no legal incidents can attach to registration by a minor, and that the Civil Court should not give effect to such registration.

"For these reasons I hold that the suit as against the minor appellant was time-barred."

The District Judge accordingly dismissed the suit as against the minor defendant, and against that decision the plaintiff now appealed to the High Court.

Mr. *W. C. Bonnerjee* and Babu *Umakali Mukerjee* for the appellant.

Babu *Nil Madhub Bose* and Babu *Monmohan Dutt* for the respondent.

The judgment of the High Court (GHOSE and GORDON, JJ.) was as follows:—

This was a suit to recover a certain sum of money on a registered bond, dated the 20th April 1886, executed by the four defendants in favour of the plaintiff. At the time of the execution of the bond and of the institution of the suit, the defendant No. 1 was a minor, and the plaintiff's case against him was that he borrowed the money covered by the bond for

(1) I. L. R., 18 Calc., 556.

necessaries, that is to say, for the purpose of defraying expenses incurred in defending him in a prosecution for dacoity before the Criminal Courts. This defendant, through his guardian *ad litem*, denied his liability under the bond, and he also pleaded limitation. The Subordinate Judge decreed the claim against all the defendants. He found that the minor defendant borrowed the money for necessaries, as alleged by the plaintiff, and relying on section 68 of the Contract Act, and on certain authorities cited in his judgment, he held that the bond was good and valid as against the minor. On the question of limitation the Subordinate Judge was of opinion that, notwithstanding the fact that defendant No. 1 was a minor when he admitted execution before the registering officer, the bond was duly registered under the Registration Act, and that, therefore, under Article 116, Schedule II of the Limitation Act, the suit having been brought less than six (though more than three) years after the due date was within time. And as regards the plea of fraud in the registering officer, which appears to have been raised before him at the trial, the Subordinate Judge held that, although there was certainly a league between the plaintiff and the minor defendant to defraud the Sub-Registrar, still "it cannot be contended that thereby the plaintiff has committed an act of fraud on defendant No. 1. The learned vakil for the defence referred me to the definition of fraud in section 17 of the Contract Act. That definition abundantly shows that it is no fraud unless committed by a party, and the Sub-Registrar was certainly not a party within the meaning of the definition." On appeal by the minor defendant the District Judge has reversed the decree of the Subordinate Judge and dismissed the suit as against him. He agrees with the Subordinate Judge that the minor defendant borrowed the money on the bond for necessaries, and he holds therefore on the authority of the case *Walter v. Everard* (1) that he is liable. But as regards limitation he finds that the suit is barred. Relying upon certain passages in the judgment of Lord Esher in the case *Walter v. Everard* the learned District Judge is of opinion that the present suit should be dealt with as if there were no bond at all, and that therefore the suit, having been instituted more than three years after the

1894

SHAM
CHARAN MAL
v.
CROWDBRY
DEBYA SINGH
PAHRAJ.

(1) L. R. [1891] 2 Q. B., 369.

1894.
 SUDAM
 CHARAN MAJ.
 CHOWDHRY
 DEBYA SINGH
 PAHRAJ.

due date of payment, is barred. And on the question of registration of the bond the learned Judge observes: "Registration of a document executed abhittedly by a minor is no registration as against him, for a minor is incompetent to admit execution before the registering officer, and that officer has no jurisdiction to record a minor's admission." Against this decision the plaintiff has appealed to this Court and his learned Counsel has contended before us that the District Judge has taken an erroneous view of the questions of limitation and registration, while the learned vakil for the respondent has argued in support of the judgment of the District Judge on the ground decided against him, that the contract was not for necessaries within the proper meaning of the term, and that therefore it is not binding on the minor. We think, however, that this latter contention is not correct. The liberty of the minor was in jeopardy. There was a charge of dacoity impending over him in the Criminal Courts, and in order to defend him and to save him from punishment and incarceration in jail it was necessary to raise funds for legal advice and assistance. Pleaders were employed to defend him, and the money borrowed under the bond was paid to them as remuneration. In these circumstances, we think it may fairly and reasonably be said that the money was borrowed for necessaries within the meaning of section 68 of the Contract Act, and that the minor is accordingly liable on the contract. As an authority for the view we take we may refer to the decision of Mr. Justice Broughton in *Watkins v. Dhunoo Baboo* (1) in which that learned Judge held that a minor is liable for costs incurred in successfully defending a suit in which his property was in jeopardy, and that such costs are recoverable from him as if they were necessaries. Whether the principle which underlies that decision can be supported in its entirety, it is not necessary to discuss in this case. It is sufficient to say that the liberty of the minor being at stake, we think the money should be taken to have been borrowed for necessaries.

Then as to the plaintiff's appeal we think it must succeed. We think the learned District Judge is in error in holding that the present suit should be treated as if there were

(1) I. L. R., 7 Cal., 140.

no bond at all, and that it is accordingly barred, and further that on this point he has not rightly construed the judgment of Lord Esher in the case of *Walter v. Everard*, to which we have already referred. That suit was brought on a covenant under seal, in which a consideration is implied, and Lord Esher in his judgment says: "It is not true that you can sue an infant upon a bond given by him for the price of necessaries supplied to him, with all the ordinary incidents of such an action. The plaintiff cannot simply put in the bond against the infant, and say that bond is under your seal, and there can be no inquiry into the consideration given for it." And further on in his judgment the same learned Judge observes: "You cannot sue the infant upon his bond as a bond. But if the bond is what is called a single bond, that is, if it is given only for the reasonable price of necessaries supplied to the infant, and there is no penalty, the infant can be sued upon it." We think that the principle thus enunciated when applied to the present case means this—that before the minor defendant could be fixed with liability, it was necessary for the plaintiff to prove not only the execution of the bond by him, but also that he borrowed the money covered by it for necessaries; in other words, it was incumbent on the plaintiff to establish this fact as if there were no bond at all, and in this sense we think the suit must be treated as Lord Esher observes: "Just as if there had been no deed." The bond cannot be ignored and treated as non-existent, because it is the basis of the suit, and it has been proved to have been executed by the defendant. On the question of registration also we are unable to agree with the District Judge. The point for determination is whether the bond has been duly registered in accordance with the provisions of the Registration Act, and we are of opinion that it has. Section 35 of the Act provides: "If any such person (by whom the document purports to be executed) appears to the registering officer to be a minor * * * the registering officer shall refuse to register the document as to the person so appearing." In the present case the defendant No. 1 appeared before the Registrar and admitted execution of the bond, and the document was accordingly registered. We may well assume that before the registering officer registered

1894

 SHAM
 CHARAN MAL
 ?
 CHOWDHRY
 DEBYA SINGH
 PAHRAJ.

1894
 SIAM
 CHARAN MAI
 v.
 CHOWDHRY
 DEBYA SINGH
 FAHRAJ.

it, he was satisfied in his own mind (at any rate it did not appear to him to be otherwise) that the defendant No. 1 was not a minor, and by so registering, we are unable to say that he has in any way violated the law relating to the registration of documents. That law nowhere lays down that registration of a document, execution of which is admitted by a minor, is *ipso facto* void as against such minor, or void for want of jurisdiction on the part of the registering officer. No doubt deception appears to have been practised on the registering officer by the plaintiff and the minor by concealing from him the fact of the minority of the latter, but that, in our opinion, does not amount to fraud in the proper sense of the term, so as to invalidate the registration proceedings as against the minor defendant. In this view we think that the suit is not barred, it having been instituted within six years from the due date of the bond.

We accordingly decree the appeal, and restore the decree of the Subordinate Judge with costs.

H. T. H.

Appeal decreed.

PRIVY COUNCIL.

P. C.^s
 1894
 April 19
 & 20.
 June 9.

KADER MOIDEEN (PLAINTIFF) v. C. W. NEPEAN AND OTHERS
 (DEPENDANTS.)

[On appeal from the Court of the Judicial Commissioner of
 Lower Burma.]

Mortgage—Form of Mortgage—Sale—Construction whether lands had been sold or mortgaged—Evidence—Documents explained by parol—Waste land grants—Usufructuary mortgage.

Waste lands, granted in 1870, were transferred by the grantee in 1871 to his creditor, since deceased, from whose representatives in 1891 he claimed redemption, alleging that the transfer had been made upon a mortgage with possession. The grantee had previously, in 1870, mortgaged the lands to this creditor to secure advances taken for part payment of the purchase-money. In 1871 they arranged that the creditor should advance the entire balance, and they jointly petitioned for an entry to be made, in the register of waste land grants, that the ownership had been transferred from the one to the other of them. This entry was made, and endorsements to the same effect were made on the documents of grant.

* Present : LORD HOBHOUSE, LORD ASHBOURNE, LORD MACNAGHTEN, and SIR R. COCKE.