

(1871) 08 CAL CK 0002
In the Calcutta High Court

Jadunath Mitter

APPELLANT

Vs

Bolyechand Dutt

RESPONDENT

Date of Decision : 09-08-1871

Acts Referred:

Citation : (1871) 08 CAL CK 0002

Judgement

Phear, J.—The question upon which I reserved my decision in this case is substantially as follows,—namely, whether or not the plaintiff, a Hindu inhabitant of Calcutta, was, by the operation of Act XL of 1858, affected with the disqualification of minority in the interval between the ages of fifteen and eighteen years? The 26th section of the Act declares that "for the purposes of this Act, every person shall be held to be a minor who has not attained the age of 18."

2. At one time a very narrow construction was given to these words, and in the case of *Monsoor Ali v. Ramdoyal* 3 W.R., 50, which was heard on special appeal by Mr. Justice Bayley and myself so long ago as 1865, I felt myself obliged to say that I doubted the correctness of the received ruling. Three years afterwards, in the case of *Madhusudan Manji Vs. Debigobinda Newgi*, the Full Bench gave effect to views which, as I collect from the judgment of the late Chief Justice, were essentially the same as those expressed by me in the first-mentioned case. By that Full Bench decision I understand it to be now settled that, in the *Mofussil* at any rate, all persons (with certain exceptions) who have not attained the age of eighteen years are under the disability of minority.

3. Mr. Cowell, on the part of the plaintiff in this case, contended--

1st. That the operation of the Act does not extend to the area of the High Court's ordinary civil jurisdiction.

2nd. That a person whose father is alive and of full age (as was the case with the defendant) falls among the exceptions.

4. To support the second of these two contentions the learned counsel relied

upon the words of section 27. These are: Nothing in this Act shall authorize the appointment of a guardian of the person of any minor whose father is living and is not a minor. But it appears to me, in truth, that these words tell against his argument, and not in favor of it. It is manifest on the face of the Act that the disqualification of minority contemplated by the Legislature, was as much disability to care for, manage, and deal with property, both moveable and immoveable, together with the thereto incidental disability to contract debts, as the non-possession of the full liberty of personal action. When therefore in section 26 the Legislature provided that the powers which it had previously given to the Civil Courts in comprehensive terms with regard to minors and their property should, under the circumstances mentioned, be withheld in one particular only, it surely by implication kept them in force in all other respects. And if it were otherwise, we should here again meet the same difficulty as that which influenced the Court in the case quoted, for a young man who had been a major for a couple of years, might suddenly find himself reduced to a condition of minority by the death of his father. I think, then, that the fact of the defendant having a father alive does not place him beyond the scope of the Act.

5. The first part, however, of Mr. Cowell's contention is not so easily disposed of as this. Although it has always seemed to me tolerably plain that the purposes of the Act referred to in the 26th section could not be so limited as they were at first held to be, still I find it difficult to satisfy myself how far the Legislature intended these words to reach. The title of the Act and its preamble run thus:--

An Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal.

Whereas it is expedient to make better provision for the care of the persons and property of minors not brought under the superintendence of the Courts of Wards; It is enacted as follows.

6. If I endeavour to gather the purposes of the Act from these paragraphs alone, there is obviously no reason whatever for saying that section 26 does not extend to persons within the area of Calcutta, just as much as to persons in any other part of the Presidency.

7. The enacting clauses which follow the preamble make the care of the persons of minors and the charge of their property subject to the jurisdiction of the Civil Court, and give power to the Civil Court, during minority, to appoint administrators of the property and guardians of the persons of minors, and to oversee and control these administrators, &c., in the execution of their trust. Before this Act was passed, the Civil Courts of the Mofussil had no general function of this character, but the Supreme Court within, at least, the local limits of its original civil jurisdiction, had the power of the Court of Chancery over the persons and property of minors,--a power considerably larger in some respects than that conferred by the Act on the Civil Courts. It was therefore natural that the Legislature should be careful in this Act to abstain from interfering in any

way with the Supreme Court, and accordingly in the interpretation clause of the Act we have,--"The expression "Civil Court," as used in this Act, shall be held to mean the principal Court of original jurisdiction in the district, and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction." Thus, unquestionably, the operation of the Act in creating a special jurisdiction in the Civil Court, and in regulating the exercise of it, was confined to the principal District Courts of the Mofussil; and no doubt, also, it must, on a survey of the Act, be admitted that to create and regulate such a jurisdiction-was the proximate object to which the Act was directed. If therefore I take this to be the full extent of the purposes of the Act" as in the 26th section intended, I must consider that the title and the preamble of the Act are couched in unnecessarily large terms, and must hold that while eighteen years is, according to the Full Bench decision to which I have referred, made the limit of minority in all cases when the person and the property of the minor are subject to the jurisdiction of the Mofussil Courts, still, when these are subject to the jurisdiction of the High Court, that limit remains at the old point of fifteen years. But the inconvenience which would follow on this latter construction would be exceedingly great. For instance, the case may be supposed of a young Hindu gentleman residing in Calcutta, and possessed of a large fortune in Government paper. Upon completing his fifteenth year, such a person, being by the assumption beyond the operation of Act XL of 1858, would be of age, and emancipated from this particular protective jurisdiction of the High Court. Let us suppose further that one of his first acts as a major is to buy a piece of land at Bhowanipore and to build a house on it, and that he then goes and resides there. Ipso facto, he comes within the scope of Act XL of 1858, and is reduced to the state of minority again. And difficulties of the most absurd kind with regard to his liability on contracts already made by him would immediately start up, The Mofussil Civil Courts obviously could not evade these by acting on any principle of comity, such as is followed in like cases by the Courts of countries which have different limits to minority. With the two possible constructions in view, ought I to attribute to the Legislature the intention that effect should be given to that one of them which introduces us to so much unnecessary confusion and mischief as this? It must be remembered that I am not concerned here with a matter arising out of the conflict of laws of two independent countries, but I have simply to satisfy myself what is the law which one Legislature intended to prevail under two different sets of circumstances; and I have on a former occasion pointed out the distinction between the two situations. On the whole, then, I think that I ought not to attribute to the Legislature the intention to set up for the same persons two standards of majority, one to prevail in the Mofussil and the other in Calcutta, which would be the result of limiting the purposes of the Act to the particular purpose of enlarging the jurisdiction of the principal District Courts exclusive of the Supreme Court. In *Monsoor Ali v. Ramdoyal* 8 W.R., 50, I proposed to treat these words as equivalent to relative to all that forms the subject of this Act." In *Madhusudan Manji Vs. Debigobinda Newgi* , Mr. Justice E.

Jackson stated that he could not read this law as having any other effect than altering the general law of minority, and in fixing one law for all minors not taken under the charge of the Court of Wards, and not European British subjects,--viz., eighteen years of age." The judgment of the Full Bench in that case, delivered by the late Chief Justice, went fully to the length of Mr. Justice Jackson's opinion; and I am told that on a late occasion Mr. Justice Markby, when sitting on the original side and dealing with a matter of procedure, assumed that the 26th section of the Act was, under the authority of the Full Bench decision, operative within the original jurisdiction. It thus appears to me that I am justified in coming to the conclusion that, with the purpose of making better provision for the care of the persons and property of minors in the Presidency of Bengal, the Legislature by the 26th section of this Act enacted that eighteen years should be the limit of minority, without any condition as to place within the Presidency. Clearly this construction of the section does "not affect the powers of the High Court over the person or property of any minor subject to its jurisdiction:" it only lengthens the period of time in each case during which those powers can be exerted. Also, I may repeat the remark made by the late Chief Justice in the Full Bench case to which I have referred, that, for minors taken under the charge of the Court of Wards, minority continues to the same limit of eighteen years, so that under the view which I have taken of the Act, a minimum amount of inequality is left in existence. I am therefore of opinion that the defendant, at the time when he entered into the contract upon which he is sued, was labouring under the disability of minority. He has done nothing since that time to ratify that contract, and consequently this suit must be dismissed with costs on scale No. 2.