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on the original plaintiff as a plaintiff in ejectment; he is further in error in presuming, without going more fully into the point, and giving reasons for his opinion, that a cultivator of a number cannot resign it without the consent of his heirs; it has nowhere been so ruled, and it is a question whether such a ruling could be supported. The decree of the Senior Assistant Judge is reversed, and the case remanded for re-trial on merits with reference to this judgment.

Decree reversed, and suit remanded.

Special Appeal No. 396 *of* 1867.

Aug. 20.

MAHIPATRA'V CHANDRARA'V ....*Appellant.*
NENSUK A'NANDRA'V SHET MA'RVA'DI......*Respondent.*

Limitation—Minor—Guardian—Act XIV. of 1859, Sec. XI.

Where the father of a minor lent on account a sum of money to the defendant and died without having received back the money, and the account was continued with the defendant by the mother and guardian of the minor, and a balance was struck during the minority of the infant.

It was held that the cause of action arose at the time such balance was struck, and that, as the cause of action accrued to the minor during his disability, his representatives could sue to recover the balance at any time during the term of disability, and that a claim by the minor on attaining his majority, or, if he should die, by his representative, would not be barred if preferred within three years from the cessation of the disability. Further, the extension of the period of limitation conceded to a minor on account of legal disability, is not affected by the fact that during his majority he is represented by a guardian.

THIS was a special appeal from the decision of A. C. Watt, Acting Assistant Judge of Púna, in Appeal Suit No. 123 of 1865, reversing the decree of the Principal Ṣadr Amín at Puná.

The appeal was heard before TUCKER and GIBBS, JJ.

Vishvanáth Náráyaṇ Manḍlik for the appellant.

Dhirajlál Mathurádás for the respondent.

The facts of the case, so far as material, are stated in the following judgment, delivered this day by—

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TUCKER, J.:—The plaintiff, as administrator to the estate of a minor, named Sambhájiráv, sued to recover a sum of Rs. 1,508-9-3, which, he alleged, had been deposited by the minor's father with the defendant in 1855, with interest at six per cent. per annum from the 9th of November 1855, when the account was settled, Rs. 827-10-8; total Rs. 2,336-3-11. The minor's father died on the 11th of July 1856.

The defendant denied that there had been any deposit, but admitted that the plaintiff's father had an account with him up to the date of his death, which had been continued by his widow up to September or October 1858, when a balance was struck; that no steps were taken to recover the debt till the present suit; and that its maintenance was, consequently, barred. The defendant also pleaded a set-off of Rs. 915.

The Principal Sadr Amín held that the maintenance of the suit was not barred, as no cause of action accrued to the plaintiff, till he was appointed administrator to the minor's estate. He considered the debt due to the minor's estate proved, and that the alleged set-off, which was not satisfactorily established, might be recovered by the defendant in a separate suit, if he thought fit to bring an action. He, therefore, decreed to the plaintiff the amount claimed with simple instead of compound interest, and so deducted Rs. 104-10-9 from the amount mentioned in the plaint.

In appeal this decree was reversed by the Assistant Judge at Puná, who held that the maintenance of the action was barred by the Limitation Act.

In special appeal it has been contended that the Assistant Judge's decision on this point was erroneous.

The plaintiff claimed the money as a deposit, and relied on Cl. 15, Sec. I. of Act XIV. of 1859. The Assistant Judge, though he raised an issue in the following terms:— "Has the plaintiff proved that he deposited the money?" recorded no finding on this issue, though in his finding on a previous issue, to wit: "Is the claim barred by limitation or

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not?" he appears to have come to the conclusion that there was no evidence of any deposit having been made, and that the claim was for the balance of an account current between traders who had had mutual dealings, and to which the provisions of Sec. VIII. of Act XIV. of 1859 applied. This is the view which the defendant himself took of his dealings with the minor's father, and also with the minor's mother after the father's decease; and from his written statement he appears to have considered that the cause of action arose in September 1858 (Ashvin, Shake 1780), when mutual dealings ceased. Supposing this view to be correct, it would seem that a right of action accrued to the minor in Ashvin 1858 to recover any balance which might have been then due from the defendant, and that, as he was under a disability when this right first accrued to him, any claim, which may be preferred by his representative during his disability, or by himself on attaining his majority, or, if he should die, by his representative subsequently, will not be barred till three years shall have expired from the date when the disability shall have ceased (Sec. XI. of Act XIV. of 1859). The Assistant Judge's view, that a minor is not under a disability if a guardian can sue on his behalf, is, in our opinion, erroneous, and opposed to the plain meaning of Sec. XII. of the Limitation Act.

We consider, then, that the claim must be treated as a claim on behalf of a minor to recover a balance due on an account current which continued between the defendant and the minor's father and minor's mother and guardian up to the month of Ashvin A.D. 1858; and that the Assistant Judge, having ruled wrongly on the preliminary point, must now decide whether the balance found to be due by the Principal Ṣadr Amín is correct; and whether the court of first instance decided rightly in refusing to allow the set-off of Rs. 915, which defendant alleged to be due on account of a partnership between himself and the plaintiff in a shop at Dhár. It is not clear who is meant by the designation "plaintiff" in the defendant's written statement and recorded examination before the Principal Ṣadr Amín—the

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minor, or the minor's father, or the present administrator to the estate. This point must be elucidated before it can be decided whether the defendant can be allowed a set-off against the present claim.

We, therefore, reverse the decree of the Assistant Judge on the preliminary point, and remand the suit to the lower appellate court, for a new trial and decision on the merits, with advertence to the directions contained in this judgment. The costs of this special appeal to be borne by the defendant, the special respondent. The costs in both the lower courts to be apportioned at the final decision. We remark that it will be a proper case for the award of interest from the date of the institution of the suit till the date of payment, if ultimately any balance be decreed in favour of the plaintiff.

GIBBS, J., concurred.

Decree reversed, and suit remanded.

Dec. 12.

Special Appeal No. 179 *of* 1867.

VINA'YAK SADA'SHIV VOZE ....*Appellant.*
RA'GHI, widow of ALYA', HAS PA'TI'L bin ALYA', and KA'MLYA' bin ALYA'.........*Respondents.*

Lease—Agreement between Mortgagor and Mortgagee—Rent—Interest—Act XXVIII. of 1855.

The provision contained in Act XXVIII. of 1855 that any rate of interest which the parties may have agreed upon shall be awarded, in no way prevents a Civil Court in India, which administers both law and equity, from examining into the character of agreements made between persons, such as mortgagor and mortgagee, trustee and *cestui que trust*, between whom relations exist, enabling one party to take advantage of the other, and from declining to enforce such agreements when they are shown to be unfair and extortionate.

THIS was a special appeal from the decision of S. H. Phillpotts, Assistant Judge of the Konkan at Thánú, in Appeal Suit No. 457 of 1866, confirming the decision of the Munsif of Panvel.