1943 *Present :* **Hearne J.**

SOMASUNDERAM, Appellant, *and* UKKU *et al.*, Respondents.

50—C. R. Matale, 5,567.

Minor—Decree against him unrepresented—Proceedings irregular—Application to set aside after majority—Civil Procedure Code, s. 480.

Where a decree is entered against a minor who is unrepresented by a guardian he may move to have the proceedings set aside under section 480 of the Civil Procedure Code even after he attains majority.

Muttumenika v. Muttumenika (*18 N. L. R. 510*) followed.

APPEAL from an order of the Commissioner of Requests, Matale.

J. E. M. Obeyesekere (with him *H. W. Thambiah*), for plaintiff, appellant.

V. F. Guneratne (with him *S. R. Wijayatilake*), for defendants, respondents.

Cur. adv. vult.

August 23, 1943. HEARNE J.—

The plaintiff sued three defendants on a promissory note for the recovery of Rs. 300 and judgment was entered by default on September 19, 1939. Thereafter execution was applied for and writ was issued. On September 11, 1942, subsequent to the issue of the writ, the third defendant applied to have all proceedings against her set aside on the ground that she was a minor on the date of judgment. Her application which was made seven months after she had attained majority was allowed and the plaintiff now appeals.

It was admitted for the purpose of this appeal that on the date judgment was entered the third defendant was a minor and that no steps had been taken to have a guardian *ad litem* appointed. In these circumstances, according to one view of the matter, all the proceedings in so far as they affected the third defendant are a nullity. "If one who was a minor at the time of the suit" I quote from the judgment of the Court in A. I. R. 1934 Madras 386 "is sought to be made liable on a decree passed in that suit, it is open to him to plead that that decree was a nullity and might be disregarded by him without instituting a suit to set aside that decree. This principle has been clearly laid down by the Privy Council in *Khiarajmul v. Daim*[1]. If the present defendant was really no party to the former suit, it goes without saying that the decree passed in that suit would be a nullity as against him and therefore would be unenforceable".

A different view, however, has been taken by this Court. In *Muttu Menika v. Muttu Menika*[2] it was held that a judgment against a minor who is unrepresented by a guardian "is at most an irregularity and that the judgment will stand as a valid adjudication until reversed . . . .".

What steps should a person take who seeks to get rid of a judgment and decree passed at a time when he was a minor and in a suit in which he was not represented? If he is to be regarded as being "in the proper sense of the term" *not* a party—and it was so held by the Privy Council in *Rashid-Un-Nisa v. Muhammad Ismail Khan*,[3] he could file a separate suit as was done in that case. But if he was a party and there is a valid adjudication against him until reversed, he would at least be entitled to intervene for the purpose of effecting a reversal of the adjudication. *Muttu Menika v. Muttu Menika* (*supra*) indicates that he should proceed under section 480 of the Civil Procedure Code or apply for *restitutio in integrum*. *Rupesinghe v. Fernando*[4], says that section 480 C. P. C. "should be availed of" and in *Thiagarajah v. Balasooriya et al.*[5] it was held that no relief would be given by way of *restitutio* in a case in which an application under section 480 provides an equally effective remedy.

[1] *(1905) 32 Cal. 296 at 312.* [2] *(1915) 18 N. L. R. 510.* [3] *31 All. 572.*
[4] *(1918) 20 N. L. R. 345.* [5] *14 C. L. W. 91.*

It is clear that, having regard to the particular view taken by this Court, the ordinary remedy has been held to be an application under section 480. It was under this section that the third defendant moved. But counsel for the appellant has argued that the section is inapplicable, at any rate in so far as the setting aside of a decree is concerned, for the reason that, while it enacts that "every order made . . . . may be discharged", an order means "the formal expression of any decision which is *not* a decree". A decree therefore cannot be discharged. This argument appears to run counter to the decisions of this Court which bind me and all I need say, even if those decisions refer to judgments and not to decrees, is this. A decree—and it is the inviolability of a decree, if section 480 is employed, that has been urged—merely gives formal expression to the *order* contained in the judgment (section 188) and if that order is set aside the appellant may still retain the empty shell of a decree for what it is worth to him!

It was also argued that a minor may move under section 480 while he is still a minor and, referring to *14 C. L. W. 91*, a lunatic may do the same while he is still a lunatic, but a minor must resort to *restitutio* or, at any rate, is precluded from moving under section 480 once, as in the present case, he has attained majority. The same position, it is argued, applies to a lunatic after he has regained his sanity and has ceased to be a lunatic. The authorities which I have cited deal with the problem in general terms and draw no distinction between a minor and an erstwhile minor seeking relief in respect of a judgment passed against him while he was still a minor.

The appeal is dismissed with costs.

Appeal dismissed.