[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 171 *of* 1873.

1873. August 26.

DHARMA'JI VA'MAN and another .... *Appellants.*
GURRA'V SHRINIVA'S and another ....*Respondents.*

Guardian and Ward—Compromise—Judicial Dicision—Admission.

The transactions into which guardians enter on behalf of their wards, must secure to the latter some demonstrable advantage, or avert some obvious mischief, in order to obtain recognition in the Courts.

When parties enter into a compromise, or family arrangement, in order to avoid litigating the question, as to whether one of the parties is entitled to certain property or not, such compromise will not be set aside, although it should eventually turn out that the party taking something under the compromise was in reality legally entitled to nothing.

But where such a compromise was alleged to have been entered into by a mother, on behalf of two minor sons on the one hand, and an adult member of the family on the other, agreeing to give the latter more than had been awarded by a judicial decision, *it was held* that the compromise was not binding on the minors.

Apparent acquiescence in such a compromise by one of the minors after arriving at majority, though evidence against him, is not evidence of a conclusive character, when not continued for any considerable time.

THIS was a special appeal from the decision of M. B. Baker, Acting Senior Assistant Judge at Kaladgi, in the Belgam District, amending the decree of the Subordinate Judge of Bijápur, who had awarded a part of the claim.

The facts of the case, in so far as they are material, sufficiently appear from the judgment of the Court.

The appeal was heard by MELVILL and WEST, JJ.

Dhirajlál Mathurádás, Government Pleader, for the appellants.

Shántárám Náráyan for the respondents.

Cur. adv. vult.

WEST, J.:—The defendants, in the present case, sued the plaintiffs during their minority for a portion of the *Watan*

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lands held by the latter. As to a part of their claim they succeeded, one *páv* equal to 30 *bighás* having been awarded to them; as to the remainder they failed. The decree to this effect was made in April 1863, and, in the latter part of that year, an application for execution was made, which, in January 1864, was rejected on the ground (an insufficient one as is admitted) of its not having been accompanied by a copy of the decree. Some negotiations for a settlement of the family dispute appear to have been meanwhile going on, the chief agent in which was Kalliánráv, the father-in-law of the plaintiff, Dharmáji, and the Assistant Judge has found that the land now in dispute was made over to the defendants in fulfilment of the private agreement thus arrived at. When precisely this agreement was concluded, or when it was carried out by a delivery of the two *pávs* of land, the Assistant Judge has not found. If the agreement was made in the month allowed for appeal subsequent to the decree obtained in April 1863, the presumption is strong that Dharmáji, the elder of the plaintiffs, against whom the decree had been obtained as a minor, was still in that condition. If the negotiation, as is irresistibly suggested by the application for execution, rejected in January 1864, had not been completed at that date, then the right of appeal had been lost by the present defendants through the lapse of time. As to the age of the plaintiff, Dharmáji, the Assistant Judge says, "Plaintiff admits that he is now (15th November 1872) 24 years of age .... it follows, therefore, that he was of age in 1864." From Dharmáji's statement that he was 24 years old in November 1872, it cannot be inferred that he was more than fifteen in the early part of 1864, and the Assistant Judge adopts the view that Dharmáji was a minor at the time of the agreement and transfer, by placing his obligation on the ground, not of the transaction having been originally binding on him, but of his ratification or adoption of it after he attained his majority by the receipts which he gave to the defendant, Gurráv, in 1866, 1867, and 1868. Clearly then the land was not made

over to the defendants as alleged by them, that is, after Dharmáji had come of age, and in virtue of an agreement which he himself carried into execution.

It is unnecessary to insist on the special protection which the law gives to an infant. He cannot enter into a contract binding on himself except for necessaries, cannot deprive himself of his estate so as to prevent his annulling the transaction when he comes of age. He who enters on the infant's estate will be made responsible as a bailiff or guardian, if not as a trespasser: *Wyllie* v. *Ellice* (a), *Blomfield* v. *Eyre* (b). Similarly, the Hindu Law invalidates a gift made by an infant donor (Vyav. May. Ch. 9 pl. 6). The appointment, and the powers and duties of guardians, are variously regulated by different systems of law. Where a father has died without making a provision on the subject, the English Courts ascribe to a mother a guardianship by nature until the infants attain their majority: *Mendes* v. *Mendes* (c). The Hindu law clothes her with a similar duty or privilege: *Ram Dhun Doss* v. *Ram Ruttun Dutt* (d), and she may, as guardian, act for the infant in settling the terms of a partition: *Nallapa Reddi* v. *Balammal* (e), *Lakshmibái* v. *Ganpat Morobá* (f). But just as under the English law, Lord Hardwicke in *Pierson* v. *Shore* (g) said, "If this indeed had been wantonly done by the guardian, without any real benefit to the infant, it would have been proper to come into a Court of Equity to be relieved against it," and limited the guardian's power to such acts as the infant, if of mature years, might reasonably have done; so in the case of *Temmakal* v. *Subbammál* (h) and in many others under the Hindu law, the transactions, into which guardians enter on behalf of their wards, must, it has been held, secure to the latter some demonstrable advantage, or avert some obvious mischief in order to obtain recognition in the Courts. Instances of what may and of

(a) 6 Hare 505.
(b) 14 L. J. Ch. 260.
(c) 3 Atk. 624.
(d) 10 Calc. W. R. Civ. R. 425.
(e) 2 Mad. H. C. Rep. 182.
(f) 4 Bom H. C. Rep. O. C. J. 159.
(g) 1 Atk. 481.
(h) 2 Mad. H. C. Rep. 47.

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what may not be done will be found in *Bodh Mull* v. *Gouree Sunkur* (i), and *Baboo Kumola Pershad Narain Singh* v. *Nokh Lal Sahoo* (j).

The question arises then: whether the arrangement entered into by the mother, Táibái, of the plaintiffs in this case, was so manifestly beneficial to her wards, and so governed on the part of those dealing with her by considerations of what was fair to the infants under her care as to be binding on the latter. The compromise of doubtful claims is a basis for binding engagements both at law and in equity; and for the settlement of family disputes especially, "it is clear that when parties enter into a compromise or family arrangement in order to avoid litigating the question as to whether one of the parties is entitled to certain property or not, such compromise will not be set aside, although it should eventually turn out that the party taking something under the compromise was, in reality, legally entitled to nothing:" *Thornbrough* v. *Baker* (k); and that the Courts will make many allowances in order to support any arrangement of this kind is shown by the leading case and several of the cases quoted in the notes to *Stapilton* v. *Stapilton* (l). Apparent inadequacy of consideration, for instance, has much less influence in such transactions than those of the ordinary kind: *Thornbrough* v. *Baker* (*supra*), *Howard* v. *Harris* (m). The intimate connexions of a Hindu family might warrant the extension of these principles to somewhat remoter relatives than under the English system; but the conditions, under which they are to be applied at all, are that the parties be on equal terms, the absence of imposition or undue pressure, and the existence of something to be compromised. A compromise, in good faith, of a claim wholly unfounded, is a good consideration for a promise: *Callisher* v. *Bischoffsheim* (n); but where this good faith does not exist "forbearance of an unfounded suit is no forbearance," as was said by Lord El-

(i) 6 Calc. W. Rep. Civ. R. 16.
(j) Ibid. 30.
(k) 2White & Tud. 3rd Ed. 935.
(l) 2 Tud. L. C. 3rd Ed. 756.
(m) 2 White & Tud. 3rd Ed. 947.
(n) L. R. 5 Q. B. 449.

lenborough in *Jones* v. *Ashburnham* (*o*). If, therefore, the respective claims of the branches of the family in the present case, represented by Dharmáji and Gurráv, had been undetermined by judicial decision, it would have been an arrangement that the Courts should, by all means, support, if these two persons as adults had agreed to a division of the property between the respective branches. But, in fact, the dispute between them no longer related to a point that admitted of controversy. Gurráv had sued and obtained an award of a portion of what he had demanded. Thus the relative rights of the parties had been definitely settled. Even if Dharmáji himself, when affairs had been placed on this footing, had agreed to a compromise by which Gurráv was to obtain double of what the Court had awarded to him what consideration would there have been to support this resignation of an ascertained right? Gurráv says he intended to appeal, but an appeal was not open to him. The Assistant Judge has said that "further litigation might have taken place in the execution of the decree," but this further litigation, if any occurred, must obviously have been all to the disadvantage of the judgment-creditor, Gurráv, himself, and could form no ground for his receiving 60 *bighás* instead of 30. Whether, if Dharmáji being an adult had delivered the land to Gurráv, he could, in his own right, recover it back, may admit of question (see 1 Camph 136, 2 Ev. Potth. 406); but as he was a minor, he cannot be prejudiced by an act to which he could not validly consent. His mother, it is said, did consent, but what is the value of this? She was a woman, and as such regarded by the Hindu, as by the English law, as especially subject to imposition (Vyav. M. Ch. 1 S. II. pl. 10). She was a widow with her elder son close on his majority, and with a second son but three or four years younger. She had resisted the claim made by Gurráv throughout the lawsuit instituted by him. She could not then have thought his demand for twice as much as had been awarded to him a just one. It is inconceivable but that

(*o*) 4 East 464.

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some undue influence must have been brought to bear in order to make her yield to it. She would probably have a claim to the interference of a Court of Equity, had she been dealing with her own property. How much stronger a claim have her sons whose property she affected to deal with? All the circumstances are wanting which could give efficacy as against them to so one-sided a transaction.

The Assistant Judge has considered, however, that the plaintiff Dharmáji has, by his conduct, since he came of age, adopted the compromise made on his behalf. It is no doubt the law, as shown by the cases already referred to, that the Courts will not interfere with a family settlement long acquiesced in. They will not, on a change of circumstances, upset an arrangement even between strangers, the benefit of which has been taken for many years by the party who seeks to overthrow the compromise. In the case of *Smith v. Low* (p), the defendant had, as an infant, joined his mother in a lease of property belonging to him and his five brothers. Rent had been received from the lessee until ten years after the youngest of the family had come of age, that is, probably, for seventeen or eighteen years, at least, after the eldest brother had attained his majority. An action was then brought to eject the lessee, but Lord Hardwicke on a bill brought in equity established the lease. So in *Cole v. Gibbons* (q), a subsequent confirmation, without fraud or surprise, of a bargain that could not itself be enforced, was held by Lord Talbot to give it validity. But then, as observed in a note to this case, the party confirming must be fully apprized of his right to be relieved against the original transaction. The same principle seems to be involved in *Walker* v. *Symonds* (r). Where a plaintiff had not been aware of his right to eject, he was allowed to proceed though he had received rent for twenty years after coming of age under an invalid lease made during his nonage by his guardian: *Hicks* v. *Morant* (s). What effect, then, are we, guided by these principles, to ascribe to

(p) 1 Atk. 489. (q) 3 P. Wms. 289. (r) 3 Swanst. 69.
(s) 2 Dow & Cl. 414.

the receipts which the Assistant Judge has construed as a "ratification of the conveyance" to Gurráv? The receipts are for contributions by Gurráv of a portion of the *Judi* or reduced assessment of the *Watan* proportional to the part made over to him. They do not, as in the English cases, in which the payment and receipts of rent have been held a binding acknowledgment of tenancy, imply any relation of landlord and tenant as subsisting between the parties. Gurráv has insisted on his proprietary right, and in that right has obtained possession of the land. His payments to Dharmáji were made, because, as the whole *Watan* was entered in the name of the latter as representing the principal branch, he alone could settle directly with Government for its demand, though, on his failure, the amount due might be realized from Gurráv or any other actual holder of the land (Reg. XVII. of 1827 Sec. 5, cl. 2). Dharmáji received no improved rent from Gurráv; so that there was here no taking of a benefit under a contract which the taker afterwards seeks to repudiate when it has become burdensome. He was substantially a mere agent in passing on from Gurráv to the Government a payment inseparably attached to the enjoyment of the land.

Still, however, these documents, or at least two of them, do contain admissions, that the *Watan* land occupied by Gurráv had been given to him as having fallen to his share. If, then, the admissions had been so often repeated and over so long a period as in the case of *Smith* v. *Low* (*supra*), or for any considerable time after Dharmáji had attained complete maturity of understanding, we should have felt bound not to disturb an arrangement which, however indefensible at its inception, had been so recognized and adopted by the party who might have called it in question. But the receipts were really given by a boy of from sixteen to nineteen years of age. The very form of them, carefully moulded into an assurance of Gurráv's right, suggests the operation of his mind rather than of Dharmáji's only in drawing them up. Dharmáji cannot, indeed, be relieved from

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their operating as evidence against him, but they do not act as estoppels or with the conclusive effect which the Assistant Judge has ascribed to them. The land had been made over to Gurráv; in a sense, it had fallen to his share. A boy of sixteen might probably suppose that the arrangement had been justly and properly made, but there is nothing to indicate that, after being fully aware of his legal position in relation to Gurráv, he deliberately accepted that arrangement. There is nothing to show that he knew he was entitled to relief in equity against the agreement entered into by his mother during his minority. Thus viewed, his admissions, though undoubtedly evidence against him, are not evidence of a conclusive character. They do not, under the circumstances, make that a binding compromise which was ineffectual before. Equity extends its aid after the attainment of their majority to those who, as infants, had become involved in transactions that would injure them, (*a*) and this appears to be a proper case for the exercise of such a jurisdiction.

So far, therefore, as the agreement, under which Gurráv holds the sixty *bighás* of land, extends beyond the Court's award to him in 1863 of thirty *bighás*, we think it cannot be sustained. This appears to have been the view of the Subordinate Judge, who tried the present case in the Court of first instance, and his decree must be restored. The agreement will thus be made to give effect to the rights of the parties as clearly ascertained. For more than this, Gurráv could not effectively stipulate, and Táibái, as a guardian, could concede no more.

The view we have taken of this case, as between Dharmáji and Gurráv, makes it unnecessary to enter on a discussion of Devráv's liability or non-liability for the acts of his brother. We will say no more than that, even while he may bind himself, the managing member of a Hindu family cannot, by plainly improvident and groundless admissions, transfer the patrimony of his brothers gratuitously to a stranger; nor will the Court lend its aid to such transactions, essentially

opposed, as they are, to the first principles of equity, whatever technical form they may assume.

The decree of the Assistant Judge is reversed and that of the Subordinate Judge restored. Costs on respondents.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 34 *of* 1873.

August 19.

PREMA'BHA'I HEMA'BHA'I and others ...... *Appellants.*

T. H. BROWN .... *Respondent.*

Principal and Agent—Extent of Authority—Known limit—Divisibility of Claim.

A firm of carriers authorize one of their partners to draw bills on the firm to the extent of Rs. 200 each. The partner, acting in excess of his authority, and without the knowledge of the firm, made two promissory notes, in the name of the firm, for Rs. 1,000 each. The plaintiff knew the partner was limited to a particular sum, but also knew that two of his bills for Rs. 300 each had been previously accepted by the firm. In an action on the notes :—

Held, 1st, that the firm was not liable for the whole amount drawn; and 2ndly, that the contract, whereon the action was founded, was not capable of division, and, therefore, the firm was not liable to the extent of Rs. 200.

THIS was a special appeal from the decision of F. D. Melvill, District Judge of Ahmadabad, affirming the decree of the Second-Class Subordinate Judge of the same place.

The action was brought by T. H. Brown, as indorsee of two promissory notes, drawn by T. D. Hewett, in the name of Hewett and Co. of Ahmadabad, for Rs. 1,000 each. The plaintiff sought to recover the amount from the members of the firm of Hewett and Co.

The defendants pleaded that Hewett had no authority to draw the notes, or incur any debts on account of the firm