viously to Ramchandra's adoption. But it was no part of Ramchandra's duty, (even if he knew of what was going on,) to step in, and protect the plaintiff against the consequences of his own unauthorized dealings with Ramchandra's property. If he has acquired, by assignment, any valid charges against that property, it is open to the plaintiff to assert his claim in another suit, if he think it worth his while to do so in the face of the Collector's certificate.

The decree of the Subordinate Judge is confirmed with costs.

APPELLATE CIVIL.

Before Mr. Justice Melville and Mr. Justice Kemball.

HUSÉIN BEGAM (ORIGINAL PLAINTIFF), APPELLANT, *v.* ZIA-UL-NISA BEGAM AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.* *April* 10.

Mahomedan law—Sale of minor's property—Validity of such sale—Guardian—Sanction of sale by ruling authority.

The plaintiff sued to recover her husband's share in certain property at S. to which he and other persons became entitled as heirs of M. That property had been sold to the defendants by the heirs of M. during the minority of the plaintiff's husband, his elder brother acting for him in the transaction. It was proved that the sale of the property to the defendants had been approved of by H., who was the Agent of the Governor of Bombay at S., and the representative of the ruling authority in the management of M.'s estate. The plaintiff contended that, according to Mahomedan law, it was not competent for the elder brother of a minor, as guardian, to alienate a minor's property.

Held that the sanction of the ruling power constituted a sufficient authority for the act of the guardian, provided that the transaction was one which, according to Mahomedan law, a duly constituted guardian might have entered into on behalf of his ward. That law permits a guardian to sell the immoveable property of his ward, when the late incumbent died in debt, or when the sale of such property is necessary for the maintenance of the minor. The evidence in the present case showed that the indebtedness of M. and the distressed condition of his heirs existed in a sufficient degree to justify the sale of the whole property of the heirs.

This was an appeal against the decree of Rao Bahadur Mangeshrav Balvant, Subordinate Judge (First Class), Surat.

The plaintiff in this case sought to establish her title to a fourth of her husband Kutubudin's share in the three-annas' share in

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the rupee adjudged to Mir Kamrudin in the estate of the late Nawab of Surat, amounting to Rs. 1,75,415-8-11. The defendants relied upon their purchase of the three-annas' share from the plaintiff's husband and the other heirs and descendants of Mir Kamrudin. The only question here was whether the plaintiff's husband Kutubudin was bound by the sale, he having been admittedly a minor at the date of the sale. The Subordinate Judge held that the plaintiff's husband, although a minor, was bound by the sale, and dismissed the plaintiff's claim.

The plaintiff appealed to the High Court.

Pandurang Balibhadra for the appellant.—The plaintiff's husband being a minor at the date of the sale, his elder brother acted for him. But, according to Mahomedan law, he is a remote guardian, and had no control of any kind over the property of his ward. The sale was, therefore, invalid. No greater powers can be exercised by a *de facto* guardian who has not legally completed his right to manage a minor's estate than can be exercised by a guardian appointed by the Court: *Abhassi Begam* v. *Maharanee Raj-Roop Koorvar* (1).

Shantaram Narayan for the respondents.—Any defect which might have existed in the guardianship was cured by the sanction of the ruling power.

MELVILL, J.—The plaintiff's husband, Kutubudin, was admittedly a minor at the date of the sale, viz., the 30th April, 1855. The guardian who acted for the Minor in the transaction was his elder brother Hemdulla. It is contended that it was not competent to such a guardian to alienate his ward's property. In Macnaghten's Principles of Mahomedan Law, Chap. VIII, sec. 5, it is said: "Guardians are near or remote. Of the former description are fathers and paternal grandfathers and their executors and the executors of such executors. Of the latter description are the more distant paternal kindred, and their guardianship extends only to matters connected with the education and marriage of their wards. The former description of guardians have power over the property of the minor, for purposes beneficial to him. In their default this power does not vest in the remote guardians,

(1) I. L. R. 4 Calc. 33.

but devolves upon the ruling authority." This being the law on the subject, it may well be that an alienation by Hemdulla would have been void, if it had not received the sanction of the ruling authority. But as we have already noticed in the companion case which we first heard (*Mir Azimudin Khan* v. *Zia-ul-Nisa*(1),) Mr. Hebbert, who was the Governor's Agent at Surat, and the representative of the ruling authority in the management of Mir Kamrudin's estate, was consulted as to the sale, and approved of it. He reported to the Government that the transaction was no bad bargain for Mir Kamrudin's heirs, and thereupon the Government communicated to Mr. Hebbert their sanction to the sale. It does not appear that the circumstance that some of Mir Kamrudin's heirs were minors was brought prominently to the notice of the Government; but Mr. Hebbert was well aware of the fact, and there is no reason whatever to suppose that the Bombay Government would have taken any other view of the transaction, if it had been expressly informed of a circumstance of which it was probably not ignorant. Under these circumstances we think that the sanction of the ruling power constituted a sufficient authority for the act of the guardian, provided that the transaction was one which a duly-constituted guardian might have entered into on behalf of his ward under the rules of the Mahomedan law. Now at page 64 of Macnaghten's Principles are enumerated seven circumstances under which a guardian is at liberty to sell the immoveable property of his ward. One of these circumstances is where the minor has no other property, and the sale of it is absolutely necessary to his maintenance. Another is where the late incumbent died in debt, which cannot be liquidated but by the sale of such property. We are of opinion that the evidence establishes that these two circumstances, viz., the indebtedness of Mir Kamrudin and the distressed condition of his heirs, existed in a sufficient degree to justify the sale of the whole property of the heirs. For these reasons we confirm the decree of the Court below with costs.

(1) *Supra*, p. 309.