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[562] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

NATHURAM (*Purchaser of the Original Plaintiff's decree*), Appellant
 v. SHOMA CHHAGAN, MINOR, BY HIS GUARDIAN (*Original
 Defendant*), Respondent.* [27th January, 1890.]

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*Minor—Guardian—Debt incurred by natural guardian for funeral ceremonies of the
 minor's father—Liability of the estate for such debt—Hindu law.*

On the death of his father the minor defendant was taken charge of by one Naran Hargovan, his father's cousin, who also took possession of the estate of the deceased. To defray the expenses of the funeral ceremonies of the deceased, Naran borrowed money from the plaintiff, who now sued to recover the amount from the estate of the deceased.

Held, that Naran Hargovan, as nearest male relative and guardian, according to Hindu law, of the orphan minor, had authority to bind the estate in the hands of the minor so far as the loan was necessary to secure the proper performance of the funeral ceremonies of the minor's father.

[*Appr.*, 26 B. 206 (216) = 3 Bom. L.R. 738 (759) ; R., 20 B. 61.]

THIS was a second appeal from a decision of G. Jacob, Joint Judge of Ahmedabad.

The plaintiff sued to recover the sum of Rs. 753-8-6 out of the estate of one Chhagan Rameshvar, who died in 1881, leaving him surviving the defendant, his son, a minor aged one year.

On Chhagan's death his cousin, Naran Hargovan, took charge of the minor and managed the estate. He borrowed various sums from the plaintiff, amounting to the said sum of Rs. 753-8-6, and expended them on Chhagan's funeral ceremonies.

Subsequently a legal guardian of the person and property of the minor was appointed, and thereupon Naran Hargovan's management ceased.

The plaintiff brought this suit against the minor to recover the above sum out of the estate of the deceased; and he subsequently added Naran Hargovan as co-defendant.

The principal defence put in on behalf of the minor was that Naran Hargovan had no authority to contract the debt, and that the estate of the deceased was, therefore, not liable.

The Court of first instance awarded the plaintiff's claim against the estate of the deceased.

[563] The plaintiff then assigned the decree to the present appellant Nathuram.

The defendant appealed to the Joint Judge, who reversed the lower Court's decree with the following remarks:—

"It is clear from the plaintiff's statement (Ex. 8) and from the deposition of Naran Hargovan (Ex. 26) that the money was advanced to Naran himself, and that he did not purport to represent the minor defendant in the transaction. He clearly had no right to represent Chhagan, who was then dead; and as the property was admittedly divided, he could not act as manager of the family so as to charge the estate. The plaintiff's cause of action for the money was, therefore, against Naran Hargovan

* Second Appeal No. 258 of 1888.

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alone * * * * *. There was no express or implied consent between the plaintiff and the minor upon which the plaintiff could sue him * * * * *. I have no option but to reverse the decree of the lower Court against the appellant and reject the plaintiff's claim * * * * *"

A second appeal to the High Court was lodged.

Goverdhanram Madhavram, for the appellant.—The loan made by the assignee of the plaintiff was for proper purposes, and is, therefore, binding on the estate of the deceased in the hands of the minor—*Gadgeppa Desai v. Apaji Jivanrao* (1). Although Naran had not been appointed guardian of the minor and the administrator of the deceased's estate, nevertheless he as the nearest relative was the natural guardian, and expenditure incurred by him during his management must be regarded as that of a *de facto* manager—*Bai Amrit v. Bai Manik* (2).

Gokuldas Kahandas, for the respondent (defendant), contended that the estate was not liable for the debt incurred by Naran, who had not been appointed guardian by the Court, but that Naran was personally liable, as held by the lower appellate Court.

JUDGMENT.

SARGENT, C.J.—The Exs. 8, 26, 3 and 4 can leave no doubt that it was the intention of both parties to the case that credit should be given to Chhagan's estate, and not to Naran personally, as was the case in *Gadgeppa Desai v. Apaji Jivanrao* (1), and the question is, therefore, whether Naran had authority to [564] bind the estate in the hands of the minor. He was the nearest male relative and guardian, according to Hindu law, of the orphan minor, whose duty it was to provide for the funeral ceremonies of his deceased father. And under these circumstances he had authority to bind the minor by a loan, supposing it to be necessary for the purpose—*Bai Amrit v. Bai Manik* (2)—and that it was his intention to act for the minor in the transaction is sufficiently shown by the form it assumed. So far, therefore, as the loan was required for the proper discharge of that duty, it was a charge on the estate of the deceased.

We must, therefore, reverse the decree, and send the case back for a fresh decision having regard to the above remarks. Costs to abide the result.

Decree reversed.