

by adoption cannot be given up by the adopted son," although "he may give up his right of inheritance." This document, therefore, can only operate as a release to Koiná of all the plaintiff's rights as adopted son in Ganu's property, and would, we think, only reinstate her in the same position as she occupied before plaintiff was adopted by her; and as defendant's adoption was invalid, nothing would pass to him by force of such adoption.

It was contended, however, by Mr. Apté that Koiná, after the plaintiff had passed the release, became a trustee of the property for the benefit of the defendant; but if Koiná could possibly be regarded as a trustee for the defendant, it could not be otherwise than in his intended character of the adopted son of Ganu, which character he could not legally fill as before stated. The defendant No. 1, therefore, never acquired any title to the property.

On the other hand, whatever estate may have been vested in Koiná by the release, plaintiff would be entitled to it on her death either as the adopted son of Ganu or as heir of Koiná. We must, therefore, confirm the decree with costs.

*Decree confirmed.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

BAI SOMI (ORIGINAL OPPONENT), APPLICANT, *v.* CHOKSHI ISHVARDA'S MANGALDA'S (ORIGINAL APPLICANT), OPPONENT.\*

1894.

February 20.

*Surety—Surety for guardian of a minor's estate—Release of surety—Minors' Act (XX of 1864), Sec. 12—Contract Act (IX of 1872), Sec. 130.*

Where a surety for the guardian of a minor's estate appointed under the Minors' Act (XX of 1864) applied to be released from his obligation as surety on account of the guardian's mal-administration of the estate,

*Held*, that the very object of requiring security was to guarantee the minor's estate against such misconduct or mismanagement on the part of the guardian; that the surety, therefore, could not be discharged, and that section 130 of the Contract Act (IX of 1872) was not applicable to the case.

*Quære*—Whether the surety may not apply to the Court for protection against the guardian.

\*Application No. 169 of 1893 under the extraordinary jurisdiction.

1894.

BÁI SOMI  
v.  
CHOKSHI  
ISHVARDÁS  
MANGALDÁS.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of G. McCorkell, District Judge of Ahmedabad.

One Bái Somi, widow of Pátel Harjivan Kevaldás, applied to the District Judge under the Minors' Act (XX of 1864) for a certificate of management of the property of her two minor sons. A certificate was granted to her on her furnishing two sureties for Rs. 28,600. Subsequently one of them (Chokshi Ishvardás Mangaldás) applied to be released from his liability as surety, on the ground (*inter alia*) that Bái Somi declined to show the accounts and was mismanaging the property. A notice was served upon Bái Somi calling upon her to furnish a fresh surety. She did not do so, and in answer to the surety's application she contended that he could not withdraw or be released from his obligation as surety. The Judge held that under section 130 of the Contract Act (IX of 1872) the surety could claim to be released, and that he (the Judge) could not refuse to discharge him.

Bái Somi then applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling upon the surety to show cause why the Judge's order should not be set aside.

*Govardhanráam M. Tripáthi*, for the applicant Bái Somi, in support of the rule:—The appointment of the manager and sureties was made under the Minors' Act (XX of 1864). The Judge was, therefore, wrong in applying the Contract Act (IX of 1872) to the case. The present Guardian and Wards' Act (VIII of 1890), which repealed Act XX of 1864, lays down that all the proceedings commenced or held under the repealed Act shall be considered to be proceedings under the new Act: see section 2, clause 2; and section 48 enacts that orders passed under the Act are final. The Judge was, therefore, wrong in interfering with the order under which the sureties were appointed.

*Márkand M. Mehtá*, for the opponent Chokshi Ishvardás, showed cause:—We rely on *Bhat Harikrasan v. Rámchandra*<sup>(1)</sup>. We were

(1) P. J. for 1888, p. 288.

unwilling to continue surety because the manager withheld accounts from us and was otherwise mismanaging the property.

[SARGENT, C.J.:—That was not a sufficient reason for discharging the surety. If the manager mismanages the property, the surety will be held liable.]

If a manager mismanages the property he is liable to be removed, and on his removal the sureties will be absolved from their liability, and that being so, we submit that the surety can be relieved on his own application.

SARGENT, C. J.:—Section 130 of the Contract Act, on which the District Court relies for its decision, is not applicable to a security by way of suretyship required by the Court and undertaken under section 12 of Act XX of 1864 by the surety.

The original applicant asks to be released from his obligation as surety on account of the guardian's mal-administration of the minor's estate; but the very object of requiring such security was to guarantee the minor against such misconduct or mismanagement on the part of the guardian. The case is not like that in *Bhat Harikrasan v. Rámchandra* <sup>(1)</sup>, where the Court held that the District Judge could cancel the suretyship in the interest of the minor. In holding this view of the surety's obligation, we do not say that the surety may not apply to the Court to take steps for his protection against the guardian.

We must, therefore, make the rule absolute and discharge the order with costs.

*Rule made absolute.*

(1) P. J. for 1888, p. 288.

## APPELLATE CRIMINAL.

*Before Mr. Justice Jardine and Mr. Justice Ránade.*

QUEEN-EMPRESS v. VASTA CHELA AND OTHERS.\*

*Penal Code (Act XLV of 1860), Secs. 320 and 326—Grievous hurt—Remaining in hospital for twenty days—Presumption.*

The accused were charged with causing grievous hurt. The Joint Sessions Judge, relying apparently on evidence that the injured person remained in a hospital for the space of twenty days, drew from that circumstance alone the inference

\* Criminal Appeal, No. 460 of 1893.

1894.

BÁI SOMI  
v.  
CHOKSHI  
ISHVARDÁS  
MANGALDÁ'S.

1894.

February 21.