

that prescribed by Mahomedan law has taken place; and it is clear that the application of this law would long ago have broken up the property as could easily have been proved if it had been followed. In the cases referred to by the Subordinate Judge, Suit No. 854 of 1878 and Appeal No. 176 of 1887 (Exhibit 50), the parties were Boráhs and it was held that their custom of succession was according to Hindu and not according to Mahomedan law. The evidence of Polka Mulji (Exhibit 40) seems specially significant, for it shows that the sisters of Nur Bápu did not get the shares in the family property to which they would have been entitled under Mahomedan law, and this evidence was not contradicted as might without difficulty have been done if it had been incorrect.

Looking to these circumstances I think it sufficiently proved that the succession of the Boráhs of Ránpur is regulated by Hindu law, subject possibly to a special custom excluding altogether daughters and other females entitled by Hindu law to take more than a widow's interest. Whether this special custom really prevails, it is unnecessary to consider in this case, for there seems no doubt that Hindu law is applicable as between the widow of the last holder and his daughter.

On these grounds I concur in confirming the decree of the Subordinate Judge with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

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v. VADILA'L VAKHATCHAND (ORIGINAL PLAINTIFF), RESPONDENT.

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October 3.

Minor—Guardian and ward—Powers of guardian—Guardian not competent to bind his ward by personal covenants—Act XX of 1864, Secs. 18 and 29—Guardian's authority to contract debts for the marriage of his ward without the sanction of the Court—Debts contracted for pilgrimage expenses not binding on minor—Guardian's power to acknowledge debts—Limitation Act (XV of 1877), Sec. 19—Acknowledgment.

A minor cannot be bound personally by contracts entered into by a guardian which do not purport to charge his estate.

* Cross Appeals Nos. 161 of 1892 and 10 of 1893.

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Act XX of 1864 gives no power to a guardian or administrator to bind his ward by personal covenants.

A guardian appointed under Act XX of 1864 can pledge the property of his ward for purposes beneficial to the minor, but not as a security for money previously borrowed which the minor was under no obligation to pay.

Under section 29 of Act XX of 1864 a guardian cannot contract a debt for the marriage of his ward without the sanction of the Court.

Debts contracted by the guardian of a minor for a pilgrimage not undertaken in the discharge of an urgent spiritual duty which it was obligatory on him to perform, are not necessities for which the minor would be held liable.

A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of section 19 of the Limitation Act (XV of 1877).

Sobhanadri Appa Rdu v. Sriramulu(1) dissented from.

THESE were cross-appeals from the decision of Rao Bahádur Lalshankar Umiáshankar, First Class Subordinate Judge of Ahmedabad.

The plaintiffs sued to recover from the defendant and his estate a sum of Rs. 39,040-10-9, being the balance due for moneys lent and jewellery sold to the defendant's mother and guardian during his minority.

The defendant was the Talukdár of Sánand and Koth. His father, Bhagvantsangji, died on the 3rd November, 1869. The defendant was born on 15th January, 1870.

On the 24th July, 1872, defendant's mother, Rupáliba, obtained a certificate under Act XX of 1864 appointing her guardian of his person and administratrix of his property.

In 1883, Rupáliba, acting as guardian of her minor son, opened an account with the plaintiffs' firm which supplied her with money, jewellery and other articles from time to time.

The moneys were borrowed (1) for the purpose of a pilgrimage undertaken by Rupáliba to Benares and other sacred places in Upper India, and (2) on the occasion of the marriage of the defendant, which took place in 1888.

The plaintiffs' account was adjusted from time to time. The last adjustment was made on 5th November, 1888, when a balance

(1) I. L. R., 17 Mgd., 221.

of Rs. 32,936-1-3 was found due to the plaintiffs' firm. This adjustment was signed by Rupáliba as guardian of her minor son.

In April, 1890, the plaintiffs pressed for payment, and threatened legal proceedings, when Rupáliba pledged with them ornaments worth Rs. 20,000, or thereabouts, as a security for the debt.

On 11th November, 1890, plaintiffs and defendant's guardian Rupáliba referred certain disputes as to interest, &c., to arbitration, and on the 15th November, 1890, the arbitrators made an award directing the defendant's guardian to pay the plaintiffs Rs. 36,401-9-0 within a month. The award was filed in Court and a decree passed in terms of the award.

In January, 1891, defendant attained majority, and on his application the decree on the award was set aside, and the plaintiffs were referred to a regular suit to enforce the award.

The plaintiffs thereupon filed the present suit on the 5th November, 1891, claiming Rs. 36,041-9 as principal and Rs. 2,639-1-9 as interest. They sought to recover the same from the pledged ornaments, from the defendant personally, and from his other property. They relied on the award and also stated the various previous dealings with the defendant's guardian.

The defendant pleaded (*inter alia*) that his guardian had no authority to contract debts on his behalf without the sanction of the Court; that he was not liable for the debts so contracted; that the debts were not incurred for necessary purposes; that the award was collusive and fraudulent; that the guardian was personally liable for the debts in question; that the claim was time-barred, and that the plaintiff could not be allowed to base his claim, in the alternative, on the award and on the previous dealings.

The Subordinate Judge held that the grounds relied upon by the plaintiffs not being inconsistent, there was no objection to the alternative nature of the claim; that the suit was not barred by limitation; that the debts contracted by the defendant's guardian were for legal and necessary purposes; that the pilgrimage and marriage expenses were not extravagant; that several large sums lent by the plaintiffs had gone to increase the defendant's

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estate; that some of the ornaments purchased with the plaintiffs' money were still with the defendant and his wife; that the debts were, therefore, binding on the defendant; that though the award was collusive, the plaintiffs were entitled to fall back on their original dealings. He, therefore, passed a decree in plaintiffs' favour for Rs. 33,907-8-6, to be recovered from the ornaments pledged, as well as from other moveable property of the defendant. He rejected the rest of the plaintiffs' claim.

Against this decision the defendant appealed to the High Court. The plaintiffs also appealed in respect of the items disallowed by the Subordinate Judge.

Lang (Advocate General) and *Inverarity* (with Messrs. *Bhái-shankar and Kánga*) for appellant (defendant).

Branson (with *Mánekháh Jehángirsháh*) for the respondent (plaintiff).

Lang (Advocate General):—We contend, in the first place, that there is no cause of action against the defendant. There is no privity of contract between plaintiffs and defendant. It is found as a fact that Rs. 1,25,000 or thereabouts was borrowed by the defendant's guardian for purposes of marriage and pilgrimage. This expenditure is on the face of it extravagant. It is unreasonable and unnecessary. This enormous debt was contracted by the guardian without the sanction of the Court. The defendant's mother had obtained a certificate of guardianship under the Bombay Minors' Act (XX of 1864). Under section 29 of the Act it is expressly provided that marriage expenses shall not without the sanction of the Court involve a minor's estate in debt. That being the case, the debt contracted for defendant's marriage without the sanction of the Court is absolutely null and void. For such a debt the guardian would be personally liable.—*Morley's Digest*, Vol. I, p. 276; *Farhall v. Farhall*⁽¹⁾; *Hooper v. Eyles*⁽²⁾. Nor had the guardian any authority to borrow for pilgrimage purposes and make the estate liable. The debts contracted for this purpose are not binding on the minor. The plaintiffs have mistaken their remedy. They ought to have

(1) 7 Ch. App., 123.

(2) 2 Vern. Rep., 480.

proceeded against the guardian. The guardian would be entitled to be recouped out of the minor's estate for all moneys properly borrowed. As to limitation, the guardian had no authority to acknowledge a debt on behalf of the minor. She was not his agent duly authorized in this behalf within the meaning of section 19 of Act XV of 1877—*Azuddin Hossain v. Lloyd*⁽¹⁾; *Wajibun v. Kadir Buksh*⁽²⁾. The claim is, therefore, time-barred.

Inverarity on the same side:—What is the position of Rupáliba apart from the Bombay Minors' Act (XX of 1864)? As a guardian she could only contract for the benefit of the minor's estate. She had no power to contract so as to impose a personal liability on her infant ward—*Waghela Rájsangji v. Shekh Masludin*⁽³⁾. As observed by the Privy Council, a guardian has no greater powers here than in England to bind the ward by personal covenants. That being so, the defendant is not liable to satisfy any part of the debts contracted by Rupáliba. The suit is based on the award. That award is found to be collusive and fraudulent. The suit ought, therefore, to have been dismissed. The lower Court ought not to have allowed the plaintiffs to fall back on the original transactions.

Bransdn (with him *Máneksháh Jehángirsháh*) for respondent (plaintiff):—The suit is not barred by limitation. The acknowledgments made by Rupáliba from time to time save the bar of limitation. As guardian and manager of the minor's estate, Rupáliba had authority to acknowledge the debt so as to give a fresh starting point to limitation—*Sobhánádri Appá Ráu v. Sriramulu*⁽⁴⁾; *Chinnáya Nayudu v. Gurunatham Chetti*⁽⁵⁾; *Bhásker Tátya Shet v. Vijáldál Nathu*⁽⁶⁾. The debts were incurred by Rupáliba for the benefit of the minor, chiefly for the purpose of his marriage. Under the Hindu law the marriage of a minor is a legitimate cause of expense, in regard to which a guardian has power to bind him—*Juggessur Sircar v. Nilumbur*⁽⁷⁾; W. and B. 872; Táгоре Law Lectures for 1877, pp. 279, 338. A minor is bound by the

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(1) 13 Cal. L. R., 112.

(4) I. L. R., 17 Mad., 221.

(2) I. L. R., 13 Cal., 292.

(5) I. L. R., 5 Mad., 169.

(3) I. L. R., 11 Bom., 551 at p. 561.

(6) I. L. R., 17 Bom., 512.

(7) 3 Cal. W. R., 217.

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acts of his guardian done *bond fide* and for his interest—*Hunoo-manpersaud Pánday v. Mussumat Bábooe Munráj Koonweree*⁽¹⁾; *Nathurám v. Shoma*⁽²⁾; Mayne's Hindu Law, sec. 196. It is found as a fact that the marriage expenses were reasonable, regard being had to the rank and position of the defendant. There are two kinds of guardians appointed under Act XX of 1864. One is a guardian of the person; the other a guardian or administrator of the estate of a minor. Section 29 of the Act does not apply where a guardian of the person of a minor is appointed. As Rupálíba was a guardian of the person of her minor son, she was not bound to obtain the sanction of the Court for the debts incurred for the purpose of the minor's marriage. The moneys she borrowed were applied for the benefit of the minor. With these moneys she purchased ornaments for the use of the minor and his wife. These ornaments are still in the defendant's possession. He cannot be allowed in equity to repudiate his guardian's transactions and at the same time retain the benefit arising from these transactions—*Sreemutty Ahfutoonnissa v. Goluck Chunder Sen*⁽³⁾; *Shurrut Chunder v. Rájkissen*⁽⁴⁾; *Til Koer v. Roy Anund Kishore*⁽⁵⁾; *Watson and Company v. Sham Lál Mitter*⁽⁶⁾; *Girráj Bakhsh v. Kázi Hamid Ali*⁽⁷⁾; *Bái Kesar v. Bái Ganga*⁽⁸⁾.

FULTON, J. :—The plaintiffs sued to recover Rs. 39,040-10-9 out of certain ornaments pledged to them and from the defendant personally. They based their cause of action on an award, dated the 15th November, 1890, or, in the alternative, on an account transaction with the defendant's mother who was his guardian during his minority.

The defendant, amongst other defences, urged that the suit was time-barred; that he was not liable for debts contracted by his guardian during his minority; that the award was fraudulent, and that a claim, in the alternative, on the award and on the previous transactions would not lie.

(1) 6 Moo. I. A., 393.

(2) I. L. R., 14 Bom., 562.

(3) 22 C. W. R., 77.

(4) 15 B. L. R., 350.

(5) 10 Cal. L. R., 547.

(6) I. L. R., 15 Cal., 8.

(7) I. L. R., 9 All., 340.

(8) 8 Bom. H. C. Rep., A. C. J., 31.

The First Class Subordinate Judge decided, in the first instance, that there was no objection to the alternative nature of the claim, and, after hearing the evidence, held that the claim was not time-barred; that the award was not properly arrived at; that Rs. 27,147-3-9 were borrowed for purposes that would bind the defendant, and that including interest the plaintiffs were entitled to recover Rs. 33,907-8-6 from the defendant's moveable estate. He thereupon gave a decree entitling the plaintiffs to recover from the pledged ornaments and other moveable property of the defendant Rs. 33,907-8-6, with simple interest thereon at 7½ per cent. per annum from the date of the decree till payment. He also awarded costs in proportion.

Against this decree the defendant has appealed on grounds similar to those urged in his written statement, and the plaintiffs have also appealed in respect of the items disallowed by the Subordinate Judge.

The appeals were argued before us by the Advocate General and Mr. Inverarity for the defendant and by Mr. Branson for the plaintiffs, with permission to the latter to argue further, if necessary, in respect of the items disallowed by the First Class Subordinate Judge.

The circumstances out of which this suit has arisen may be briefly summarised as follows:—This defendant is the Thákur of Sánand and Koth and is one of the chief tálukdárs in the Ahmedabad District. His position as posthumous son of his father was seriously contested and was finally established in 1874 after protracted litigation, in which his mother Rupáliba had to undergo criminal prosecution. By the will of her husband executed shortly before his death this lady was nominated guardian of the child whose birth was then expected, and on the 24th July, 1872, she obtained from the District Judge a certificate, under Act XX of 1864, appointing her guardian of his person and administratrix of his estate. About 1883 she entered into an account with the plaintiffs' firm which supplied her from time to time with money and jewellery until the account was closed on the 5th November, 1888, with a balance due to the firm of Rs. 32,936-1-3. In 1890, shortly before the majority of the

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defendant, which occurred on the 15th January, 1891, the plaintiffs began to press Rupaliba for payment. On the 6th April, 1890, she sent them a large quantity of jewellery said to be worth Rs. 20,966, which she authorized them to sell if they were not paid the full amount of their claim by the 15th October. Subsequently, on the 11th November, the plaintiffs on the one side and Rupaliba on the other referred the questions in dispute between them to arbitrators, who on the 15th idem made an award in the plaintiffs' favour entitling them to receive Rs. 36,401-9 from the defendant and to recover the amount from the pledged ornaments. An attempt was made to get this award filed in Court, but on appeal to the High Court the application was rejected. This suit was then instituted on the 5th November, 1891. The reference and award have now been made a cause of action, but the award has been held invalid, and no arguments have been addressed to us in support of it, though Mr. Branson for the plaintiffs contended that there was nothing collusive about it from which any opinion unfavourable to the honesty of the plaintiffs should be drawn. Apart from the question whether the guardian of the defendant had authority to refer the matter in dispute to arbitration, on which it is unnecessary to express an opinion, we think that the Subordinate Judge's reason for refusing to act on the award is amply supported by the evidence of the arbitrators themselves.

For the defendant Mr. Inverarity contended that as the award was held bad, the plaintiffs should not have been allowed to fall back on their claim based on the account, but on this point we overruled him as intimated at the hearing. The plaint contained a prayer based on alternative causes of action, and this fact was clearly understood by the defendant, as appears from the 14th paragraph of his written statement. Under these circumstances there seemed no objection to the plaintiffs relying on alternative grounds which, as pointed out by the Subordinate Judge, are not inconsistent.

Having thus dealt with certain preliminary points in this case, we now turn to the main questions, which are as follows:—

1. Whether Rupaliba could bind the defendant personally to pay the debts incurred?

2. Whether she was competent to pledge his ornaments, and did validly pledge them?

3. Whether the claim is time-barred, either as against the defendant personally, or to recover payment by the sale of the pledged ornaments?

4. Whether any, and if so which, of the items entered in the account were for necessaries and were not liable to be disallowed as forbidden by law?

5. What sum, if any, the plaintiffs are entitled to recover (a) from the defendant personally and (b) by the sale of the pledged ornaments?

On the first of these issues the decision must, we think, be in the negative. The remarks of the Privy Council in *Waghela Rajsangji v. Shekh Mashudin* ⁽¹⁾ are clear on this point as follows:—"Now it was most candidly stated by Mr. Mayne, who argued the case on behalf of the respondent, that there is not in Indian law any rule which gives a guardian and manager greater power to bind the infant ward by a personal covenant than exists in English law. In point of fact, the matter must be decided by equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances. Their Lordships are not aware of any law in which the guardian has such a power, nor do they see why it should be so in India. They conceive that it would be a very improper thing to allow the guardian to make covenants in the name of his ward, so as to impose a personal liability upon the ward." With these remarks before us it seems hardly necessary to discuss the matter further. Act XX of 1864 certainly gives no power to a guardian or administrator to bind the ward by personal covenants. The learned Subordinate Judge referred to section 18 of the Act, which subject to certain restrictions gives the administrator the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, but as this section merely deals with the management of the estate it does not confer any power of rendering the

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minor personally liable for debts contracted. It was suggested in argument that Ruṣālība as natural guardian of her son and as appointed to the office by her husband's will had powers irrespective of the Act. But the will gave her no power to bind her son personally, and probably would have been *ultra vires* if it had purported to do so, and no rule of Hindu law was pointed out which gives a mother such power over her son. Cases in which mortgages and other dispositions of the property by a guardian have been held binding on the ward, do not affect the question, for the power of the guardian subject to certain restrictions to alienate the property for certain purposes was not disputed. The case of *Nathurām v. Shoma Ohagan*⁽¹⁾ referred to by Mr. Branson seems in no way inconsistent with the general rule, as it merely shows that the guardian of a ward according to Hindu law may impose a charge on the deceased father's estate for expenses connected with the father's funeral ceremonies. While holding, however, that a minor cannot be bound personally by contracts entered into by a guardian which do not purport to charge his estate, we do not think it follows that he is necessarily exempt from liability—see *Marlow v. Pitfeild*⁽²⁾. If the debts were incurred for necessaries⁽³⁾, he would, we believe, be bound to pay them on the general principle embodied in section 38 of the Contract Act (IX of 1872), as his liability would not probably be affected by the fact that the loans were advanced at the instance of the guardian—see *Juggessur v. Nilumbur*⁽⁴⁾. Her contract on his behalf might be ineffectual like one entered into by himself, but the liability to discharge debts incurred for necessaries would remain: see *Walter v. Everard*⁽⁵⁾. The necessity for them would determine whether or not he was bound to repay them, and not, we think, the reasonable belief of the lender that they were for necessary purposes. The case of *Hunoomanpersaud v. Mussumat Babooe*⁽⁶⁾ was one in which the guardian had exercised her powers of mortgaging the estate, and the ruling that in respect of such a transaction a *bond fide* creditor should not suffer when he had acted with due caution, cannot, in our opin-

(1) L. L. R., 14 Bom., 562.

(2) 1 P. Wms., p. 558.

(3) Simpson on Infants, p. 93.

(4) 3 C. W. R., 217.

(5) L. R. (1891), 2 Q. B., 369.

(6) 6 Moo. I. A., 393.

ion, be extended to a case in which it is sought to make the ward personally liable for the debt. To the latter case the decision of *Barnes v. Toye*⁽¹⁾ seems more applicable, in which it was held that where an infant was sued for the price of goods supplied to him on credit, he might for the purpose of showing that they were not necessities give evidence that when the order was given he was already sufficiently supplied with goods of a similar description, and that it was immaterial whether the plaintiff did or did not know of the existing supply. See also *Johnstone v. Marks*⁽²⁾.

On the second question we think that Rupáliba as guardian and administratrix had power to pledge the ornaments for purposes beneficial to the minor, but not as a security for money previously borrowed, which the minor was under no obligation to pay. The general rule is that a Hindu guardian can pledge the property of her ward for beneficial purposes, and in respect of moveables there is no prohibition in section 18 of the Act. But the contracting of debt for marriage expenses without the sanction of the District Court is forbidden. However necessary, then, such expenses might be according to the standard of expenditure recognized by the class to which the defendant belongs, no obligation could be imposed on the minor's estate in respect of them, and no pledge of his property to secure debts incurred on account of such expenses would be valid. Mr. Branson contended that the prohibition in section 29 applied only to marriage debts incurred by a guardian of the person and did not limit the discretion of the administrator of the estate, and that as Rupáliba was administratrix as well as guardian, she could borrow for the marriage in the former capacity, if not in the latter. We do not think, however, that we should accede to this reasoning, as it would defeat the object of section 29, which evidently is to limit marriage debts to the extent which the District Court may consider reasonable. Moreover, it seems inconsistent with the simple words of the law, which declares that marriage expenses shall in no case without the sanction of the civil Court (*i. e.* the District Court, *vide* Sec. 34) involve the minor's estate in debt. The contention that in incur-

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(1) 12 Q. B. D., 410.

(2) 19 Q. B. D., 509.

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ring these marriage debts the guardian could fall back on her powers as a Hindu mother cannot, we think, be maintained after she had thought proper to accept the position of guardian and administratrix under Act XX of 1864—*Shurrut Chunder v. Ráj-kissen Mookerjee*⁽¹⁾. The object of section 29 was clearly to keep the marriage expenses within due limits. What those limits should be is no doubt a matter of opinion. The learned Subordinate Judge thinks that an expenditure of Rs. 1,00,000 on the marriage was reasonable. In this view possibly the opinion of Rájput chiefs would coincide, for their extravagance on marriages is notorious; but it is doubtful whether the District Court, which alone had jurisdiction to determine the expediency of such expenditure, would have concurred. The nett income of the estate is not clearly established, for it seems doubtful whether Devkaran, when estimating the income at Rs. 1,30,000 (Exhibit 108) had taken into account the Government dues of about Rs. 55,000, to which he refers in the latter part of his evidence (Exhibit 108). But even if the nett income were Rs. 1,30,000, the expenditure would seem to have been very heavy, bearing in mind that apparently ready money was not available to meet it. Various efforts have from time to time been made to curtail such marriage expenses. The subject is referred to in the first volume of Tod's Rájasthan, page 547, which shows that so long ago as the end of the 17th century efforts were made to limit these expenses. Under the circumstances, we doubt whether we should be justified, on the evidence before us, in treating as necessary such a large expenditure as seems to have been incurred on the defendant's marriage; but however this may be, for the purposes of this case, it must, we think, be held that whether reasonable or not, the marriage debts cannot support a pledge of the minor's ornaments, because they were not sanctioned by the District Court. Cases were referred to, such as *Sreemutty Alfutoonnissa v. Goluck Chunder*⁽²⁾, in which it was held that where money had been borrowed for necessary purposes and improperly charged on the immoveable property in contravention of the provisions of Act XL of 1858, which correspond with section 18 of the Bombay Act, the ward was in equity bound to

(1) 15 B. L. R., p. 350.

(2) 22 W. R., p. 77.

pay off such charges before recovering the property. But such cases do not seem applicable, as they were decided on the ground that the object of the debts was legitimate. Here, so far as the marriage debts were concerned, it seems to us that they were forbidden by law. Consequently, we think that these marriage debts, the payment of which could not be enforced against the minor's estate, do not constitute a valid charge on the ornaments.

In regard to the pilgrimage debts, we think the objection prevails that they cannot be treated as necessaries. Doubtless, we have to determine what are necessaries according to Hindu ideas, and a pilgrimage may be looked upon as beneficial. But we think we should be extending the meaning of the term "necessaries" very much beyond the meaning that has hitherto been assigned to the word if we were to sanction as a binding charge on the defendant a debt contracted for a pilgrimage not undertaken in discharge of any urgent spiritual duty, which it was obligatory on him to perform. No authority has been shown to us amongst cases decided, in which a guardian has been allowed to borrow money on his ward's behalf for such a purpose. Turning to the evidence it is difficult to find what was the necessity for a pilgrimage at such an inconvenient time (when it may be presumed the treasury was empty, as otherwise there could have been no need to borrow). Rupáliba deposes on the subject as follows:—"I had made a vow to make a pilgrimage when the case against me in connection with the Kunwar Sáheb was pending. Consequently I went on that pilgrimage." There is, however, nothing to show that there was any need to carry out her vow at the particular time selected, when she went with considerable pomp, taking with her her son and 75 followers; nor does it appear that the defendant was bound by the vow. In such a matter a guardian ought to exercise ordinary prudence. Expenditure that might be proper, if money were plentiful, ceases to be so when it has to be met by borrowing. We cannot then hold that the pilgrimage expenses can be treated as necessaries so as to bind the defendant to repay them.

Besides the pilgrimage and marriage expenses there are some other items about which we are not prepared at present to express an opinion. If it can be shown that they were actually applied to

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necessary purposes, and were binding debts on the minor when in 1890 Rupáliba sent the ornaments to the plaintiffs, these ornaments would doubtless be pledged for them and could be sold to pay them off. But, unless it can be shown that they were binding debts when the deposit took place, it is clear, we think, that the ornaments were not legally pledged. The loans were not advanced in the first instance on their security. The cases, therefore, quoted to show that where a guardian borrows money on mortgage the lender is only bound to make reasonable enquiries as to the beneficial nature of the loans and is not bound to see to their application, do not seem relevant. Here, the money was not borrowed on mortgage or pledge. It was borrowed on personal security, and by a subsequent deposit of the ornaments to avert a suit the guardian could not charge them, unless the minor was at the time of such deposit liable to be sued for the debt. We find, therefore, that there was no valid pledge of ornaments except in so far as there may have been debts due in 1890 by the defendant personally for necessaries supplied to him or for money lent and expended on necessaries.

Having regard to the foregoing opinions the question of limitation becomes one of less importance, but as the matter was argued, and as it may still determine the defendant's liability in case any of the items are found to be on account of necessaries, it is expedient to dispose of it. It appears to us that the acknowledgment of the guardian would not bring within time items otherwise time-barred, as she was not the agent of her ward. On this point there seems to be a difference between the recent decision of the Madras High Court in *Sobhanadri Appa' Rau v. Sriramulu*⁽¹⁾ and the earlier decisions of the Calcutta High Court in *Azuddin Hossain v. Lloyd*⁽²⁾ and *Wajibun v. Kadir Buksh*⁽³⁾, but with the utmost deference to the opinion of the learned Judge who decided the former we think that the decisions of the Calcutta High Court are more consistent with section 19 of the Limitation Act. They do not seem at variance with *Chinnaya Nayudu v. Gurunatham Chetti*⁽⁴⁾ and *Bhasker Tatya Shet v. Vijalal Nathu*⁽⁵⁾,

(1) I. J. R., 17 Mad., 221.

(3) I. L. R., 13 Calc., 292.

(2) 13 Calc. L. R., 112.

(4) I. L. R., 5 Mad., 169.

(5) I. L. R., 17. Bom., 512.

in which it was held that the manager of a Hindu family could by his acknowledgment prolong the period of limitation. The manager may, for the purposes of section 19, be the agent of his adult co-parceners, but it is difficult to see how the guardian of a minor can be treated as an agent. It was, we believe, admitted in argument that Rupaliba's power to prolong the period of limitation depended on her power to bind the minor by her contracts. The suit, therefore, seems time-barred so far as the defendant's personal liability is concerned, except in respect of the small item borrowed after 4th November, 1888. If the pledge is good in respect of any items, the suit is not time-barred to enforce payment by the sale of the ornaments, which were only deposited in 1890.

On the 4th issue it is unnecessary to say more, as the question of necessities and the effect of section 29 of the Minors' Act have already been sufficiently discussed. Mr. Branson referred to the defendant's evidence, from which it appears that he is in possession of ornaments obtained for him from the plaintiffs at the time of his marriage, and contended that it would be very inequitable that he should keep them without payment. It is greatly to be regretted that the defendant should retain them on these terms, but it seems impossible to give the plaintiffs relief in respect of them. Had they sued within the period of limitation to recover them on the ground that they were not meant to be given gratuitously, and that the defendant could not retain them without paying for them, they might perhaps have got a decree; but they have not done so. We have come to this conclusion with hesitation, but the reluctance with which we have arrived at it has been somewhat lessened by the consideration that the plaintiffs have on their side received ornaments admittedly valued at Rs. 20,966-0-0, which after this lapse of time it may possibly be difficult for the defendant to reclaim, denying, as he does, the validity of the contract on which they are said to have been delivered.

Subject, then, to the allowance of any items for which the ornaments may be found to have been duly pledged, the decree must be reversed, and the claim rejected, with costs throughout.

Decree reversed.

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MAHARANA
SHRI
RA'NMA L.
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