

APPELLATE CIVIL.

Before Mr. Justice Chindavarkar and Mr. Justice Heaton.

1909.

April 5.

MURLIDHAR NATHU GUJRATHI (ORIGINAL PLAINTIFF), APPELLANT, *v.*
 VALLABHDAS MURLIDHAR AND OTHERS (ORIGINAL DEFENDANTS),
 RESPONDENTS.*

*Guardians and Wards Act (VIII of 1890), section 41—Guardian—Order
 of discharge by the Court—Liability of the guardian to suit.*

When a declaration is once made by the Court, under section 41 of the Guardians and Wards Act, 1890, discharging a guardian from liability, the latter cannot be exposed to suits in connection with the management of the minor's property except in the case of fraud discovered after the declaration.

SECOND appeal from the decision of B. C. Kennedy, District Judge of Násik, confirming the decree passed by R. B. Khamgaonkar, Subordinate Judge at Yeola.

One Khemchand (father of defendants 2 and 3) was appointed by the Court a guardian of the property of a minor named Bhagirathi (wife of plaintiff). Bhagirathi died a minor leaving her surviving an infant daughter and her husband (plaintiff). The daughter died in 1903, whereupon the plaintiff became entitled to the property as her heir.

Among the properties which came under Khemchand's administration as guardian was a sum of money deposited with the firm of Gangaram Chhabildas (managed by Vallabhdas Murlidhar, defendant 1). The firm continued crediting interest over the amount at 4½ per cent. up to 1893-94, after which no interest was credited. Khemchand allowed the matter to rest as it was.

In 1904, Khemchand applied to the Court for a discharge from the guardianship: it was granted in spite of the plaintiff's objection.

In 1908, the plaintiff sued the manager of the firm Gangaram Chhabildas (defendant 1) and the sons of Khemchand (who

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died in the meanwhile) (defendants 2 and 3). The prayers were: first, to recover the balance of amount due at compound interest from the date of last crediting of interest less the amount already paid: and, secondly, to recover damages from defendants 2 and 3, as representing Khemchand, for fraud and negligence in not properly dealing with the sum.

The Court of first instance held that the first defendant did not owe anything to the estate: that Khemchand had not acted fraudulently or negligently in not recovering the debt sooner: and that his estate was therefore not liable.

On appeal this decree was confirmed by the lower appellate Court. The District Judge remarked:—

“I cannot say that Khemchand did his duty as a guardian should. Having ascertained that this money was lying at call without interest, being a very much larger sum than was needed for current expenses, he ought to have withdrawn it and deposited it with some bank, or in some good securities which would have brought in income to the estate, instead of allowing it to lie without profit for so many years. That is what a prudent man would do with his own funds, and, accordingly, that is what a guardian ought to do with his ward's money. It is not enough to say that Gangaram Chhabildas was a perfectly safe firm and the money could be nowhere so safe as lying at call there. There are other equally safe investments which would have brought in a reasonable amount of interest. The action of Khemchand was therefore negligent, but this does not give the plaintiff any right of suit against Khemchand, because Khemchand was discharged by the District Court and that is a protection to him against all suits, except on the ground of subsequently discovered fraud. Now, there is no fraud at all here; he did not allow this money to lie in the hands of Gangaram for any corrupt or fraudulent reason; he made no profit out of it to the prejudice of his ward. His act is not even *crassa negligentia*, whereby positive loss, easy to be foreseen, has occurred; he has merely incurred a negative loss. I am of opinion then that the suit must fail against Khemchand also.”

The plaintiff appealed to the High Court.

S. S. Patkar for the appellant.—It is found as a fact that the action of the guardian was negligent: but the lower Court has held that the order of discharge by the District Court was a protection to him against all suits except on the ground of fraud subsequently discovered. We submit the discharge is

operative only so far as regards any action that may be taken under the Guardians and Wards Act, 1890, against the guardian. But it does not take away the right of the minor or his heir to proceed against the guardian by a regular suit to enforce his liability under the common law.

D. A. Khare for defendant No. 1.

G. S. Rao for defendants Nos. 2 and 3.—The discharge of the guardian protects him and a subsequent suit does not lie. Under cl. (4) of s. 41 of the Guardians and Wards Act, 1890, when the guardian has delivered property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered. There is no allegation of fraud.

Even as regards negligence the lower Court says that the guardian's act is not even *crassa negligentia*. The maxim *actio personalis moritur cum persona* applies and therefore the heirs of the guardian are not liable.

S. S. Patkar in reply.

CHANDAVARKAR, J. :—The lower Courts have rightly, in our opinion, held that the first respondent is not answerable to the claim of the appellant.

The question is as to the liability of the second and the third respondent. Their father had been a guardian appointed by the Court and, when the minor died, the Court made a declaration discharging him so far as his liabilities under the Guardians and Wards Act were concerned. Under s. 41, cl. (4), of the Guardians and Wards Act, when a guardian has delivered any property in his possession or control belonging to the ward or accounts as required by the Court, "the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered." Such a declaration has the effect of protecting the guardian from all suits in connection with the management of the minor's property except in the case of fraud discovered after the declaration. No such fraud is found proved in the present case; but it is contended for the appellant that the declaration actually made by the

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Court saves the guardian only from suits concerning liabilities arising under the Guardians and Wards Act, not from those arising under the common law. Assuming such a distinction to exist between the liabilities under the Act and those under the ordinary law, here the complaint is that the second respondent invested his ward's money in an imprudent manner by letting it lie as a deposit without interest with the first respondent. That means that the second respondent did not deal with his ward's property in the manner he was bound to deal with it by the provisions of section 27 of the Act. That section says that "a guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own." A man of ordinary prudence invests his money for interest; and this is what the father of the second and third respondents failed to do in respect of his ward's money. There can be no question in this of any liability outside the Act. It arises under the Act itself. The order of the Court discharging the second respondent is therefore a complete protection to him, so far as the present claim goes.

The decree of the Court below must, therefore, be confirmed with costs, separate sets being allowed in the case of the first respondent and the second and third respondents.

Decree confirmed.

R. R.
