

admissible although B named his principal at the time he entered into the contract [*Calder v. Dobell*(1)].

VENKATA-
SUBBIAH
CHETTY
v.
GOVINDA-
RAJULU
NAIDU.

In our opinion there is nothing in section 91 or section 92 of the Indian Evidence Act which is inconsistent with these decisions, since a question as to who the contracting parties are is not in our opinion one of the "terms of a contract" within the meaning of these sections. We may further remark that none of the illustrations to the sections deal with this question. It would seem therefore it was not the intention of the Legislature to depart from what would appear to be the settled rule under the English law.

We must, therefore, set aside the decree and send the case back to the Court of First Instance in order that the evidence may be admitted. Costs will abide the event.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

SRIMATH DAIVASIKAMANI PANDARASANNIDHI
alias NATARAJA DESIKAR (DEFENDANT), APPELLANT,

1907.
October 18.

v.

NOOR MAHOMED ROUTHAN AND ANOTHER (PLAINTIFF),
RESPONDENTS.*

Mutt, head of.- Power to bind mutt property.—Income of mutt in the hands of successor liable for debts properly contracted.

The position of the head of a mutt in reference to the mutt is analogous to that of the manager of an infant heir. *Konwar Doorganath Roy v. Ramchunder Sen*, (L.R., 4 I. A., 52), referred to. Where debts are contracted by the head of a mutt for purposes binding on the mutt, a decree in respect of such debts may be passed against his successor charging the income of the mutt property though such debts were not expressly charged on the income of the mutt.

The plaintiffs were traders and the defendant was the head of the Kunnakudi mutt.

(1) L.R., 6 C.P., 486; Ex. Ch., 18.

* Second Appeal No. 174 of 1905, presented against the decree of M.R. Ry. W. Gopalachariar, Subordinate Judge of Madura (East), in Appeal Suit No. 244 of 1904, presented against the decree of M.R. Ry. V R. Kuppasami Ayyar, District-Munsif of Sivaganga, in Original Suit No. 56 of 1908.

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DAIVA-
SIKAMANI
PANDARA-
SANNIDHI
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ROUTHAN.

The plaintiffs sued to recover from the defendant and from the property of the Piranmalai Kunnakudi mutt, the sum of Rs. 1,788-8-8 being principal and interest due on account of the value of articles purchased from plaintiffs by the defendant's predecessor in office for the use of the said mutt up to 2nd May 1901, and subsequently up to the 13th September 1901. It was stated in the plaint that accounts were settled between the plaintiffs and the defendant's predecessor in office up to 2nd May 1901; that the defendant's predecessor in office had signed the same; and that the present defendant was liable to pay the debt, as the articles were purchased for the use and benefit of the mutt.

The defendant contended that the debt was not contracted for the benefit of the mutt, but for illegal purposes; that a subsequent trustee was not bound to discharge the personal debt of a previous trustee contracted for illegal purposes; and that neither he nor the mutt property was therefore liable for the plaint debt.

The District Munsif passed a decree in favour of the plaintiff against the income of the mutt properties, and this was confirmed on appeal by the Subordinate Judge.

The defendant appealed to the High Court.

C. V. Anantakrishna Ayyar for *P. R. Sundara Ayyar* and *S. Srinivasa Ayyangar* for appellants.

T. V. Seshagiri Ayyar for respondents.

JUDGMENT.—We are of opinion that the decree in this case as modified by the lower Appellate Court, so as to limit it to the income of the mutt property, should be upheld.

The debt on which the plaintiffs sued was incurred by the defendant's predecessor in office as manager of the mutt. The finding of the lower Appellate Court is that the debt was incurred for purposes necessary for the maintenance of the institution. In so finding, the lower Appellate Court would seem to have followed the language of the learned Judges in the judgment of *Vidyapurna Trithaswami v. Vidyanidhi Trithaswami*(1), and to have applied the test therein prescribed. We are certainly not prepared to hold that there was no evidence that the debt was incurred for a purpose necessary for the maintenance of the institution. We think the finding of the lower Appellate Court upon this question is a finding of fact which is binding on us in second

(1) I.L.R., 27 Mad., 435.

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appeal. A further point was raised on behalf of the appellant, viz., that as no express charge over the income of the mutt was created by the defendant's predecessor, the decree against the income of the mutt is bad in law. We were asked to apply the rule in the case of executors to the present case. The analogy which is properly applicable, as pointed out by the Privy Council in *Konwur Durganath Roy. v. Ramchun-ter Sen*(1) is that of the manager of an infant heir. The estate of an infant may be liable for a contract by his guardian without any express charge over the estate having been given. See for instance *Sundararaja Ayyangar v. Pattanathusami Tever*(2), *Maharana Shri Ranmal Singji v. Vadilal Vakhatchand*(3) on which the appellant relied, merely decided that an infant could not be made personally liable for a contract entered into by his guardian. Here it is not sought to make the defendant personally liable.

The second appeal is dismissed with costs. The memorandum of objections also is dismissed with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice and Mr. Justice Benson.

GOPALA AIYAR (DEFENDANT), APPELLANT,

v.

RAMASAMI SASTRIAL (PLAINTIFF), RESPONDENT.*

1907.
October 30..

Civil Procedure Code, Act XIV of 1882, ss. 584, 591, 623, 629—When review granted, no appeal lies against the final decree on grounds other than those mentioned in s. 629—Sufficiency of the reason on which review granted no ground for appeal against the final decree.

Sections 584 and 591 of the Code of Civil Procedure do not control section 629, and do not, where a review is granted and a final decree passed, confer a right of appeal, when such appeal is not based on one of the grounds mentioned in section 629.

Where an application for review of judgment is granted 'for any other sufficient reason' under section 623 of the Code, the sufficiency or other-

(1) L. R., 4 I.A., 52.

(2) I.L.R., 17 Mad., 306.

(3) I.L.R., 20 Bom., 61.

* Second Appeal No. 1334 of 1904, presented against the decree of F. D. P. Oldfield Esq., District Judge of Tanjore, in Appeal Suit No. 554 of 1900 presented against the decree of M. R. Ry. T. R. Kuppuswamy Ayyangar District Munsif of Tiruvalur, in original Suit No. 403 of 1899.