othidar for the same price for which he has contracted to sell to a third person. We might have some hesitation in saying that this is an accurate definition of the nature of the right, because such a definition if strictly pursued to its logical conclusions might lead to difficulties and complications. We however refrain from pronouncing any definite opinion on that point as the learned Advocate-General says that if it be found that his client had knowledge of the sale more than six years before the institution of the suit he would not be prepared to contend in the facts of this case that the suit would still be within time, because no offer was made to him by the owner of the property before the auction sale.

The costs of this appeal will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar.

NEELAM TIRUPATIRAYUDU NAIDU GARU AND TWO OTHERS (DEFENDANTS), APPELLANTS,

1912. October 14 and 23.

v.

VINJAMURI LAKSHMINARASAMMA (PLAINTIFF), RESPONDENT.*

Trustee—Breach of trust—Liability in damages—Failure to invest trust funds in authorised securities—Indian Trusts Act (II of 1882), sec. 20—Failure of unauthorised security—Degree of care and prudence—Indian Trusts Act (II of 1882), ss. 15 and 20—Fund 'to be applied immediately or at an early date construction of—Fund payable to minor—If payable to guardian—Liability of trustee for interest—Interest on damages—Indian Trusts Act (II of 1882), ss. 41 and 23.

A testator appointed certain persons as trustees and directed them to realise an amount payable by the Oriental Life Assurance Company and to pay a sum of Rs. 200 to his brother, another sum of Rs. 400 to his daughter for her bride's jewels and the remainder to his minor son. The trustees realised the amount due from the Insurance Company, and after paying Rs. 200 to the testator's brother, invested the balance on one year's fixed deposit with Messrs. Arbuthnot & Co. who were then believed to be in very good credit. After the deposit had been renewed several times, Messrs. Arbuthnot & Co. became insolven and the

* Second Appeal No. 1339 of 1911.

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trust fund was lost. The plaintiff, who was appointed by the Court as trustee in the place of the defendants (who were the previous trustees appointed under the will), brought this suit against the latter for damages for loss of the trust funds by reason of their breach of trust. The District Judge decreed damages against the defendants, who preferred a Second Appeal to the High Court:

Held, that the defendants were liable in damages for breach of trust.

As regards the amount payable to the minor son, it could not be applied for the purposes of the trust immediately or at an early date, as the trustees could not pay the money to the minor until the attainment of his majority, nor could it be paid to the guardian of the minor during minority. Section 41 of the Trusts Act permits payment to the guardian only of the income of the property.

The specific provisions contained in the other sections of the Indian Trusts Act are as obligatory as the general provisions of section 15 of the said Act.

The defendants were bound to invest the trust moneys in the securities specified in section 20 of the Indian Trusts Act, and having failed to do so, they must be held to have committed a breach of trust, although they had acted honestly and with the prudence which an ordinary man would exercise in the conduct of his own affairs.

A trustee, guilty of breach of trust by not investing trust funds as required by section 20 of the Indian Trusts Act is not exempted by section 15 thereof from liability in damages.

The Indian Courts have not been given the power (conferred by statutes in England) to protect trustees in any case where a clear breach of trust has been committed.

Where a trustee invests money in an unauthorised security, this must be treated as tantamount to failure to invest within the terms of section 23, clause C, of the Trusts Act, and he is liable to pay interest under that section. It may be doubted whether the rule disentitling the beneficiary to interest except in the cases enumerated in section 23, could be applied where the trust money has been lost in an unauthorised investment.

The Court should have power in such cases to award interest as damages.

SECOND APPEAL against the decree of the Diwan Bahadur M. O. PARTHASARATHI AYYANGAR, the District Judge of Gōdāvari, at Rajahmundry in Appeal No. 15 of 1908, preferred against the decree of V. SUBRAHMANYAM PANTULU, the Subordinate Judge of Cocanada in Original Suit No. 7 of 1907.

One Appalacharyulu, husband of the plaintiff died, leaving a will. He had insured his life in the Oriental Life Insurance Company. Under the will he appointed the defendants as trustees and directed them to draw the amount that may become due from the Life Insurance Company and to pay Rs. 200 to his brother, Rs. 400 to his daughter for jewels to be presented to her at the time of her marriage and the residue to his son. The defendants drew the amount from the Insurance Company

and paid up the legacy of Rs. 200 to the testator's brother. The remaining amount was placed in fixed deposit with a year's notice with Messrs. Arbuthnot & Co., who were then in high reputation and believed to be in very good credit, and the deposit was renewed year after year till the bank collapsed. In the meantime the plaintiff had applied to the defendants for the sum of Rs. 400 to make jewels and present them to her daughter at her marriage. The defendants had refused to pay that amount. The plaintiff was appointed a trustee by the Court in the place of the defendants who were removed from their office. The trust amount was still with Messrs. Arbuthnot & Co., when the plaintiff became trustee and the bank failed subsequently before the deposit receipt had matured for payment under the last renewal by the defendants. The plaintiff sued the defendants for damages for breach of trust in investing the amount as they had done and claimed to recover the balance of the amount left after the payment of the legacy of Rs. 200 made to the brother, together with compound interest thereon with yearly rests at 9 per cent. The Court of First Instance dismissed the suit, but the District Judge decreed damages for breach of trust and awarded interest on the amount at 4 per cent. per annum.

The defendants preferred a Second Appeal to the High Court.

T. R. Ramachandra Ayyar for the second appellant.

R. V. Seshagiri Rao for the other appellants.

P. Narayanamurthi for the respondents.

JUDGMENT.—The question for decision in this Second Appeal is whether the defendants have been rightly held liable by the District Judge for the damages caused to the plaintiff in consequence of the investment of the money drawn by them from the Oriental Life Insurance Company as trustees under the will of one Appalacharyulu with the late Messrs. Arbuthnot & Co. In consequence of the failure of Messrs. Arbuthnot & Co., most of the investments was lost and the plaintiff who was appointed by the Court as trustee in the place of the defendants seeks to recover from them the amount lost with interest. According to the provisions of the will the trustees after realising the amount of the insurance were to pay Rs. 200 to the testator's brother, Rs. 400 to his daughter for her bride's jewels

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and the remainder to his minor son. The first sum of Rs. 200 was paid to the brother by the trustees. The remaining amount was invested by them with Messrs. Arbuthnot & Co., in 1902 on fixed deposit for a period of one year. The deposit was renewed on each occasion that it fell due before the failure of the firm. The defendant handed over the deposit receipt to the plaintiff on the 19th October 1906; but before the deposit matured again the firm failed. Mr. T. R. Ramachandra Ayyar, the learned vakil for the appellants, has argued two contentions before us. The first is that this is not a case where the trust money could not be "applied immediately or at an early date" within the meaning of section 20 of the Indian Trust Act and that the trustees were not therefore bound to invest it on any of the securities enjoined by that section and that they were therefore bound only to act as directed by section 15 of the Act, that is "to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own." The second contention is that as they acted with ordinary prudence the provisions of the latter part of section 15 must be applied that "a trustee so dealing (that is, with ordinary prudence) is not responsible for the loss, destruction or deterioration of the trust property." The first contention cannot be upheld. With respect to the amount payable to the minor, the money could not be applied for the purposes of the trust at an early date as the trustees could not pay the money until the attainment of his majority. It is impossible to hold that they could discharge themselves by payment to the minor's natural guardian who was his mother. They took the place of the guardian so far as the protection of this money was concerned and could not lawfully make payment either to the infant or to the guardian. See Perry on Trusts, volume 2, section 624, and section 41 of the Trusts Act which expressly authorises the trustee for a minor to "pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral the whole or any part of the income to which he may be entitled in respect of such property." With respect to the sum of Rs. 400 payable to the testator's daughter the money might perhaps be regarded as capable of being applied at an early date but the trustees refused to make payment when demanded

by the daughter's guardian; and having taken the responsibility of keeping the money in investment for a long time they were bound to make the investment in accordance with their obligations as trustees. It is contended that section 15 of the Trusts Act lays down the paramount rule applicable to all dealings of trustees with trust property and control all other special provisions in the Act including section 20 regulating the mode in which they should make investments; and as Messrs. Arbuthnot & Co. had such a high reputation for credit and solvency that any man of ordinary prudence would consider it safe to invest his money with them there was no obligation to make the investment in one of the securities mentioned in section 20. This contention it is impossible to accept. The specific provisions contained in the other sections of the Act are as obligatory as the general provisions in section 15. The measure of prudence required of a trustee by section 15 must be regulated by any specific provisions applicable to special matters found in the other sections of the Act. There can be no doubt that the defendants were bound to comply with the provisions of section 20 and having failed to do so they must be held to have committed a breach of trust although there can be no reason to doubt that they acted honestly and with the prudence which an ordinary man would exercise in the conduct of his own affairs and that they were influenced merely by a desire to secure for the minor a higher rate of interest than could have been obtained by resorting to some of the other modes of investment sanctioned by section 20. "*In re Speight*; *Speight* v. *Gaunt*(1) BACON, V.C., observed: "That Gaunt was full of friendly and kindly intentions towards the family of the testator I have no doubt, and that he did his best to promote their interests preceding the 24th of February I have no doubt. Most perfectly honest intentions alone regulated his conduct. . . . But that does not help me to the solution of this question in the slightest degree. It becomes now, after the facts I have stated, a question of law only. The law on the subject is, and has been for centuries, too clear to admit of the possibility of doubt, and neither under Lord *St. Leonards' Act*, nor in any of the cases in which the Court has found excuses for trustees, and on some occasions has been able

(1) (1883) 22 Ch. D., 727 at pp. 729 and 736

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to relieve them from the burden sought to be cast upon them, has the Court lost sight of the plain principle that a trustee who takes another man's money into his hands is bound, whatever other duties he may have to discharge, to take care that that money shall be preserved, and not to deal with it or to do anything with it which a prudent and reasonable man would not do with his own money. That is the rule which is properly to be applied to this and to all such like cases." This observation was in no way dissented from by the Court of Appeal. JESSEL, M.R., only objecting to the trustee being required to take greater precautions than a prudent man of business should and dissenting from BACON, V.C. only in so far as that learned Judge observed that resort to a broker for purposes of investment was not justified. In *Learoyd* v. *Whiteley*(1), Lord WATSON observed: "As a general rule the law requires of a trustee no higher degree of diligence in the execution of his office than a man of ordinary prudence would exercise in the management of his own private affairs. Yet he is not allowed the same discretion in investing the moneys of the trust as if he were a person *sui juris* dealing with his own estate. Business men of ordinary prudence may, and frequently do, select investments which are more or less of a speculative character; but it is the duty of a trustee to confine himself to the class of investments which are permitted by the trust, and likewise to avoid all investments of that class which are attended with hazard. So, so long as he acts in the honest observance of these limitations, the general rule already stated will apply."

The next question is whether the defendants can be relieved from the consequences of their breach of trust by anything which can be found in section 15 of the Trusts Act. Their contention is that the clause in section 15 that a trustee acting with prudence is not responsible for the loss, destruction or deterioration of the trust property would permit the Court in a proper case not to award damages to the beneficiary caused by a breach of trust. This is clearly not the meaning of the section. Chapter 3 of the Trusts Act treats of the "duties and liabilities of trustees." The various duties of trustees are laid down in sections 11 to 22. Sections 23 to 30 deal with their liabilities in

(1) (1887) 12 A.C., 727.

cases of violations of trusts. It cannot be held that the provision in section 15 exempting trustees from responsibility where they have acted with prudence is intended to exonerate them where by not acting with prudence they have committed a breach of trust. The meaning of the second clause of the section is that where a trustee has acted with prudence he should not be held to be guilty of breach of trust. But this rule must be applied in conjunction with the other sections which regulate the measure of prudence required in particular cases. Section 23 lays down in broad terms that "where the trustee commits a breach of trust, he is liable to make good the loss which the trust property or the beneficiary has thereby sustained." This statement is followed by certain exceptions to the rule. It is impossible to hold that section 23 can be controlled by interpreting section 15 in such a manner as to exempt a trustee from liability for damages on the ground that he has acted with ordinary prudence. If this were the intention of the legislature it would undoubtedly have stated so by laying down a rule of liability far less comprehensive than that enacted in section 23. The Indian Trusts Act was closely modelled on the English law of trusts. There was no power in the English Courts to save a trustee from the consequences of his breach of trust when the Indian Act was passed. Thus BACON, V.C., felt bound to award damages against the trustee in *In re Speight* ; *Speight* v. *Gaunt*(1), already referred to although he held the trustee free from all blame. In England several statutes have been subsequently enacted to relieve trustees in cases where loss accrues to the estate in consequence of their acts. See sections 8 and 9 of the Trustee Act of 1893. Section 3 of the Trustee Act of 1896 gave relief to the whole extent that Mr. Ramachandra Ayyer desires that a trustee should have. It says : "If it appears to the Court that a trustee, whether appointed under this Act or not, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach then the Court may relieve the

(1) (1883) 22 Ch. D., 727.

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trustee either wholly or partly from personal liability for the same." Unfortunately the Indian Courts have not been given the power to protect trustees in any case where a clear breach of trust has been committed. The ordinary principle must therefore apply, that when an injury has been caused to the beneficiary by an act done by the trustee in violation of his duty he is entitled to claim from him the damages he has sustained by his breach of trust. The District Judge's opinion that the defendants are liable for the repayment of the amount lost by the failure of Messrs. Arbuthnot & Co. must therefore be upheld.

The only remaining point is whether the award of interest by the District Judge on the amount lost is proper. The appellants rely on section 23 of the Trusts Act which lays down that a trustee committing a breach of trust is not liable to pay interest except in the cases mentioned therein. None of the enumerated cases would comprise this case unless it can be brought under clause (*e*) which applies "where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon." Where the trustee invests money in an unauthorised security this must apparently be treated as tantamount to failure to invest, for a trustee cannot be taken to have fulfilled his duty to invest, unless he does so in the manner required by law. Besides it may be doubted whether the rule disentitling the beneficiary to interest except in the cases enumerated could be applied where the trust money has been altogether lost. The Court should have power in such cases to award interest as damages. Illustration (*e*) to section 23 shows that where a trustee has failed to invest trust money in the manner directed by the instrument of trust he is liable for interest although he may have made some other investment. The same principle should be applicable where the failure is in making an investment in accordance with the provisions of section 20. Illustration (*f*) justifies the same conclusion. The District Judge must therefore be held to be right in awarding interest also.

In *Sriramulu* v. *Venkatramanjulu*(1), on the file the High Court Original Side where certain trustees made an investment of trust moneys with Messrs. Arbuthnot & Co. SANKARAN NAIR, J., held that they were liable for the loss caused by the failure of the firm. He also directed the trustees to pay interest. But

(1) Civil Suit No. 64 of 1909.

the arguments urged in the present case with respect to section 15 of the Trusts Act and with regard to the trustees' liability for interest do not appear to have been addressed to the learned Judge.

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The result is that the Second Appeal must be dismissed with costs.

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APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Abdur Rahim.

C. NAKU AMMA AND THREE OTHERS (DEFENDANTS NOS. 2 TO 5), APPELLANTS,

v.

C. RAGHAVA MENON AND OTHERS (PLAINTIFFS AND DEFENDANTS), RESPONDENTS.*

1912. October 23 and 24.

Malabar Law—Right to maintenance—Members of a tavazhi—Maintenance out of tavazhi property—Suit against managing member of tavazhi—Tarwad property, insufficient for maintenance—Gift by husband to wife—Mention of children—Interest taken by wife, whether absolute—Right of tavazhi—Construction of deed of gift.

A member of a tavazhi has a right to sue the managing member of the tavazhi for his maintenance if maintenance is refused by such managing member, where the karnavan of the tarwad is unable to maintain the member out of tarwad property. It is immaterial whether the member of the tavazhi seeking maintenance, has private means sufficient to provide for him an adequate maintenance without necessity of recourse to the tavazhi property.

Putravakasam property is held by the members of the tavazhi to which it belongs with the ordinary incidents of tarwad property.

Per ABDUR RAHIM, J.—Even apart from the fact whether there is sufficient property of the tarwad to which a member of a tavazhi can look for maintenance, he has a right to demand an allowance in the nature of maintenance from the tavazhi property itself.

Maintenance is not a mere subsistence allowance. It should be based on the value of the tarwad property, the position of the members and not confined to what is just sufficient to satisfy the needs of the members.

A member of a tavazhi is entitled to an allowance for maintenance both from the tavazhi and tarwad properties.

Where a deed of gift in favour of a woman is clearly expressed to be to her and her children, there is no warrant for construing it as conferring on the donee an absolute title to the property given where the donee is the wife of the donor and a member of a Marumakkattayam tarwad. It makes no difference that the karnavan of the tarwad joined in the gift.

* Appeals Nos. 129 and 255 of 1909 and Appeal No. 5 of 1910.