

attachment and imprisonment but not imprisonment alone. It is to be observed that the contention is not that it is only if the attachment proves infructuous in compelling future obedience, the writ of committal is to be issued. In England the usual order in cases of disobedience of an injunction by natural persons is attachment of the person or committal; while sequestration is the usual order passed in cases of disobedience by corporations (see Oswald on Contempt, page 223). The former practice seems to have been that unless there was a previous issue of a writ of attachment sequestration will not issue but now attachment and sequestration may issue concurrently. I therefore agree to the order proposed.

SUPPI
v.
KUNHI KOYA.
—
SRINIVASA
AYYANGAR, J.

C.M.N.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

PADMA KRISHNA CHETTIAR *alias* KRISHNA IYER
(DEFENDANT), PETITIONER,

1915,
August
2 and 3.

v.

NAGAMANI AMMAL (PLAINTIFF), RESPONDENT.*

Promissory note by guardian of minor, not signing as such, whether binding on minor's estate—Negotiable Instruments Act (XXVI of 1881), ss. 28 and 30, scope of.

A negotiable instrument executed by the guardian of a Hindu minor for purposes binding on the minor is enforceable against the minor's estate though the instrument was not signed by the executant in his capacity as guardian. The minor is not personally liable on the instrument.

The case is governed by the principles of Hindu Law and sections 28 and 30 of the Negotiable Instruments Act (XXVI of 1881) are not applicable.

Subramania Aiyar v. Arumuga Chetty (1903) I.L.R., 28 Mad., 333, followed.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887) praying the High Court to revise the decree of A. S. BALASUBRAHMANYA AYYAR, the Subordinate Judge of Kumbakonam, in Small Cause Suit No. 692 of 1913.

The facts of the case appear from the judgment.

K. Bhashyam Ayyangar for the appellant. *Paternal*

T. R. Venkatarama Sastriyar, V. S. Govindachariyar and
V. S. Kallabhiran Ayyangar for the respondent.

* Civil Revision Petition No. 879 of 1913.

KRISHNA
CHETTIAR
v.
NAGAMANI
AMMAL.
—
SESHAGIRI
AYYAR AND
NAPIER, J.J.

The following judgment of the Court was delivered by SESHAGIRI AYYAR, J.—The finding in this case is that the mother of the defendant as his guardian borrowed from the plaintiff the amount sued on, and that it was spent for purposes binding on him. The question of law argued very strenuously by Mr. Bhashyam Ayyangar is that as the promissory note executed by the mother was not signed by her as guardian, she alone is liable on the note and that the decree against the defendant is wrong. He relies on the language of section 28 of the Negotiable Instruments Act and contends that the principle which renders the agent personally liable on a contract entered into on behalf of the principal applies to the case of guardians also. The short answer to this contention is that, as the Act contains no provision relating to notes signed by guardians whereas it specifically legislates for the case of agents in section 28 and of legal representatives in section 30, Courts should not by analogy extend these provisions to a deliberately unprovided case. The learned vakil drew our attention to section 26 of the Bills of Exchange Act as enunciating the principle applicable by law merchant to all cases of representation. Apart from the question whether section 26 was intended to apply to documents executed by guardians, it is evident from the omission of the general section and the inclusion of specific provisions like those to which we have already referred, that the Indian legislature has not thought fit to lay down any general rules applicable to all cases of representation. The case of one person signing for another who is *sui juris* is not in *pari passu* with that of a person executing a document on behalf of another who is incapable of contracting.

The decisions in *Koncti Naicker v. Gopala Ayyar*(1), *Govinda Nair v. Nana Menon*(2) and *Yinuganti China Venkata Rayanim v. Kotagiri Venkata Narasinha Royanim*(3) construe the provision relating to agents; they can afford no assistance to us in deciding the present case. *Ramaswami Mudaliar v. Muthuswami Ayyar*(4) is not a pronouncement on a question of law. The learned Judges were not prepared to accept

(1) (1913) 25 M.L.J., 425.

(2) (1914) 27 M.L.J., 595.

(3) (1904) 14 M.L.T., 502.

(4) Civil Miscellaneous Appeal No. 224 of 1914.

the finding of the Subordinate Judge that the debt was contracted by the mother in her capacity as guardian.

As we are not hampered by any legislative provision regarding documents executed on behalf of a minor, we must be guided by the principles of Hindu law in deciding such cases. The true test regarding the binding nature of a guardian's contract was laid down in the well-known case—*Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree*(1). Even where the relationship of principal and agent was found to exist in transactions entered into by managers of Hindu families, it was decided by a Full Bench of this Court that section 28 of the Negotiable Instruments Act did not affect the liability of the junior members. The true principle is that where the validity of a transaction has to be looked at from two standpoints, each of them should be regarded as supplementing the other. The doctrine of Hindu law is not to be ignored because a contract coming under its purview is also regulated by another provision of law. The decision in *Subba Narayana Vathiyar v. Ramaswami Aiyar*(2) does not differ from the ruling in *Krishna Aiyar v. Krishnasami Aiyar*(3). On the other hand the decision in *Subramania Aiyar v. Arumuga Chetty*(4) is directly in point. Mr. Bhashyam Ayyangar sought to distinguish this case on the ground that the claim in it was for the debt evidenced by the note and not on the note itself. We do not think this distinction has any substance. Moreover, paragraph 4 of the plaint in this case refers to the binding character of the debt: vide *Sobhanadri Appa Rao v. Sriramulu*(5). We must, therefore, hold that the estate of the minor is liable for the debt.

We think the decree of the Court below must be modified, as there can be no personal decree against the defendant: *Sanka Krishna Murthi v. The Bank of Burma*(6).

Subject to ^{the above} modification the Civil Revision Petition will be dismissed with costs.

S.V.

KRISHNA

CHETTIAR

v.

NAGAMANI

AMMAL.

—

SESHAGIRI

AIYAR AND

NAPIER, JJ.

(1) (1858) 6 M.I.A., 393.

(2) (1907) I.L.R., 30 Mad., 58.

(3) (1900) I.L.R., 23 Mad., 537.

(4) (1903) I.L.R., 26 Mad., 330.

(5) (1894) I.L.R., 17 Mad., 221.

(6) (1912) I.L.R., 35 Mad., 692.