APPELLATE CIVIL.

Before Mr. Justice Reilly and Mr. Justice Cornish.

SWAMINATHA ODAYAR, MINOR, REPRESENTED BY HIS MOTHER, MEENAKSHI (SECOND DEFENDANT), APPELLANT,

1932, December 2.

v.

K. S. NATESA IYER (PLAINTIFF), RESPONDENT.*

Negotiable Instrument—Promissory note—Minor—Guardian of —Execution by, for necessary purposes—Liability.

A guardian of a minor cannot impose a liability upon the minor by executing a promissory note on his behalf even for necessary purposes.

Distinction between the liability arising from an ordinary debt and that arising from a debt secured by a negotiable instrument pointed out.

Zemindar of Polavaram v. *Maharaja of Pittapuram*, (1930) I.L.R. 54 Mad. 163, distinguished. *Meenakshisundaram Chetty* v. *Ranga Ayyangar*, (1931) 35 L.W. 397, dissented from.

APPEAL against the decree of the Court of the Subordinate Judge of Tanjore in Original Suit No. 41 of 1925.

A. V. Viswanatha Sastri, *R. Gopalaswami Ayyangar* and *S. Ramanuja Ayyangar* for appellant.

S. Panchapakesa Sastri for respondent.

JUDGMENT.

REILLY J.—This suit, as I understand it, is a suit on a promissory note and upon nothing else. The cause of action in the plaint is stated to be the promissory note, Exhibit B. The fact that earlier in the plaint some of the previous history is recited does not affect, so far as I can see, the basis of the suit as brought by

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the plaintiff. The opening words of the learned Subordinate Judge's judgment make it quite clear that he understood this to be a suit upon the promissory note; and that is shown also by the form of the only issue in the suit: "Is the plaint promissory note true, supported by consideration and binding on defendants 2 to 8?"

Exhibit B is a promissory note payable to order, dated the 27th of November 1923, and executed by defendant 1 for himself and as guardian of defendant 2 in renewal of a previous note, Exhibit A, dated the 13th of November 1921, by the same parties. In Exhibit A it is stated that the purpose for which the debt is incurred is "family and litigation expenses". The learned Subordinate Judge has made a decree against defendant 1 for the whole amount, Rs. 17,000 and odd, and against defendant 2's property for Rs. 2,455 only. Defendant 2, who is still a minor, appeals against the decree, so far as it is against him.

Defendant 2 is the natural son of defendant 1 but was adopted by defendant 1's deceased paternal uncle. It appears that they belonged to a very wealthy family in the Tanjore district, their property being worth altogether many lakhs, we are told. In respect of that family property a partition suit was instituted by one of the members of the family in 1919 after disputes about the property had been the subject of proceedings in Criminal Courts. That partition suit was eventually tried by the Subordinate Judge of Kumbakonam as Original Suit No. 22 of 1924. In this suit the learned Subordinate Judge has made defendant 2 liable for Rs. 2,455 because he finds that amount shown in Exhibit E, a costs list in Original Suit No. 22 of 1924, as the expenses incurred by defendant 1 and his sons and defendant 2 and defendant 1's brother in that suit.

On that basis the learned Subordinate Judge has come to the conclusion that it is shown that litigation expenses had to be incurred on behalf of defendant 2 and to that extent but no further the promissory note can be held binding on defendant 2's property.

Apart from the fact that, as Mr. Gopalaswami Ayyangar for defendant 2 represents, the costs list, Exhibit E, relates not only to defendant 2 but to other parties in the partition suit, and therefore it does not show that the whole of the Rs. 2,455 had to be incurred as expenses in that suit for defendant 2, I think there are two sufficient reasons why this appeal must be allowed. The first appears to me to be really a superfluous reason; and I mention it only because it has been the subject of considerable argument before us. As Mr. Gopalaswami Ayyangar has urged, there is no real evidence establishing any necessity for borrowing money from the plaintiff for defendant 2. The plaintiff does not rely upon any supposed inquiries made by him to justify his claim; but he sets out to prove necessity. Now defendant 2 admittedly had a share, and a very valuable share, in the large family property I have mentioned. But in the partition suit a question was raised whether he had been adopted by his great-uncle. If he had been adopted, as was established in the suit and not disputed in appeal, then he was entitled to either a fourth or a fifth share in the whole family property; if he had not been adopted, he was still entitled to a very valuable share as the son of defendant 1. His interests had to be guarded in that suit: but there is nothing to show that it was necessary to borrow money in order to guard his interests. It appears that defendant 1 had been in possession of the very valuable family estates for at least two years before the partition suit was instituted; and, when once

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that suit was instituted, a receiver was appointed, who held possession of the whole family property during the long history of the suit. There is nothing whatever to show that defendant 2's interest in the family property, whatever it was, whether as the adopted son of his great-uncle or as the son of his father, was not quite enough to meet any expenses necessary on his account in the partition suit. And, after that suit had been instituted, there is evidence to show that the parties to the suit drew large amounts from the receiver for their respective purposes. There is nothing whatever to show that any expenditure required to guard defendant 2's interests in that suit could not have been met by money obtained from the receiver, if an application had been made to the Court for that purpose. For the plaintiff it is urged defendant 1 must have had accounts for the period when he was managing the family property, and those accounts are not produced. But quite apart from any accounts there is no reason whatever to doubt that plenty of money was available to guard the interests of defendant 2 before the partition suit was instituted, and any money necessary for his purposes in that suit would no doubt have been readily granted by the Court, if an application that the receiver should advance money for the purpose had been made. It is clear I think that the allegation that there was necessity to incur any such debt as this on the date of Exhibit A for any legitimate purpose of defendant 2 has not been made out.

Secondly and fundamentally it appears to me clear that the plaintiff cannot have any remedy on this promissory note against defendant 2. I may remark that defendant 1 was not the legal or legally appointed guardian of defendant 2. Defendant 2 had been adopted by his great-uncle. Both his great-uncle and his

great-uncle's wife had died; but that would not make his natural father, defendant 1, again his legal guardian. Under Hindu law the natural guardians of a minor are only his parents, and defendant 1 was legally no longer defendant 2's father after defendant 2's adoption. Defendant 1 was no more than what is often called a *de facto* guardian, that is a person who arrogates to himself the charge of a minor's person or property. In the partition suit it appears he was on record as defendant 2's guardian *ad litem*; but that would give him no additional right to incur debts on defendant 2's behalf. And, apart from defendant 1's actual position in relation to defendant 2 as *de facto* guardian or as guardian *ad litem*, how can any guardian impose a liability upon a minor by executing a promissory note on his behalf? If a promissory note is to effect anything, it must create an unconditional personal liability. How can any guardian impose an unconditional personal liability upon a minor? An agent can impose such a liability upon his principal, if his act is in effect the act of his principal; but a guardian is not the agent of his ward, however his guardianship arises. Mr. Panchapagesa Sastri has referred us to *Ramajogayya* v. *Jagannadham*(1) and *Zamindar of Polavaram* v. *Maharaja of Pittapuram*(2) as authorities showing that a debt incurred on behalf of a minor for necessary purposes of the minor or a covenant to pay a debt so incurred can be enforced against the minor's property; but those cases were not concerned with promissory notes. It is true that the principle of those cases has been applied in *Meenakshisundaram Chetty* v. *Ranga Ayyangar*(3) to a promissory note executed by the legal guardian of a minor in the name of the minor.

(1) (1918) I.L.R. 42 Mad. 185. (2) (1930) I.L.R. 54 Mad. 163.
(3) (1931) 35 L.W. 397.

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But with very great respect I may point out that the learned Judges dealt with the case on the principles applicable to a debt incurred on behalf of a minor for necessary purposes without considering the special features of a promissory note. An essential feature of a promissory note is that the promise to pay is unconditional. And a negotiable instrument is intended to be one which can pass from hand to hand, bearing its meaning on its face, as itself the basis and evidence of a money claim. Any qualification of the promise in a promissory note, such as that it is only to be enforced against a minor if necessity binding on the minor can be shown, is wholly foreign to the idea of a negotiable instrument. So far as I can see, no guardian can by executing a promissory note in the name of a minor impose an unconditional personal liability on the minor. It is unnecessary now to consider whether it might be possible for a legal or legally appointed guardian of a minor regarded as a separate entity to impose a personal liability on himself in that capacity by executing a promissory note in that capacity with the result that in that capacity he could be made to pay what was due on the note from his ward's estate. That question does not arise in this case. Nor is it necessary for us to consider whether, if better evidence had been produced by the plaintiff, he might have been able in an appropriate suit to enforce liability against defendant 2's property for the debt out of which this promissory note originally arose. This is not such a suit.

In my opinion the plaintiff can get no relief against defendant 2 in this suit upon the promissory note, Exhibit B, and therefore this appeal should be allowed with costs in both Courts and the plaintiff's memorandum of objections should be dismissed with costs.

CORNISH J.—I agree. Plaintiff has chosen to sue upon the promissory note and not upon the consideration; and the only liability under the note is the personal liability of the first defendant. If the suit had been on the consideration the case might have been different. It might then have been contended that, if it was shown that the money was borrowed for purposes which under the Hindu Law rank as a necessity binding on the minor, the plaintiff would be entitled to be subrogated to the first defendant's rights against defendant 2. No necessity has been shown for the first defendant's borrowing the money from the plaintiff on behalf of defendant 2. Assuming that the first defendant as guardian *ad litem* wanted money for maintaining the second defendant's claim in the suit, the proper person for him to apply to was the receiver in the suit. The estate was a rich one; and if money was required the receiver could have furnished it to him on the directions of the Court. The plaintiff was not ignorant of this. He says in his evidence that a receiver had been appointed in the partition suit and that he was in possession of the property.

G.R.