

1910

JAGAT
NARAIN
v.
SRI KISHAN
DAS.

of the defendants and was entitled to recover the loss he had sustained. We think that the finding on the issue is binding upon us, and that being so, we are bound by the authority of the case of *Shubho Mal v. Lachman Das* (1). In that case it was expressly held that an agent who has paid wagering losses for his principal is entitled to recover. The learned Judges decided on the authority of the case *Thacker v. Hardy* (2). This last mentioned authority was decided when the law in England in respect of gambling transactions was practically identical with the present law in this country as provided by section 30 of the Indian Contract Act. The result is that the appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

TOTA RAM (APPLICANT) v. RAM CHARAN (OPPOSITE PARTY)*.

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October 27.

Act No. VIII of 1890 (Guardians and Wards Act), section 17—Guardian and ward—Considerations by which a court should be guided in the selection of a guardian.

In considering the appointment of a guardian for a minor the proper test is the welfare of the minor. Where the applicant was a distant relation of the husband of a childless widow of some 12 or 13 years of age, who was living happily with her father, it was held that the father of the minor widow was her proper guardian. *Khudiram Mookerjee v. Bonwari Lal Roy* (3) referred to.

THIS was an application by one Tota Ram asking that the applicant might be appointed guardian of the widow of one Joti Prasad, a child some 12 or 13 years of age. The applicant was a distant relative of the deceased Joti Prasad. The widow, Musammat Reoti, was living under the care of her father Ram Charan. The court (District Judge of Aligarh) rejected the application and appointed Ram Charan as guardian of the minor. The applicant appealed to the High Court.

Babu Benoy Kumar Mukerji, for the applicant.

Dr. Tej Bahadur Sapru, for the opposite party.

KNOX and KARAMAT HUSAIN, JJ.—The District Judge of Aligarh had before him an application made by Tota Ram, admittedly a very distant relative of one Joti Prasad deceased.

* First Appeal No. 24 of 1910 from an order of D. R. Lyle, District Judge of Aligarh, dated the 11th of December, 1909.

(1) (1901) I. L. R., 29 All. 165. (2) (1878) L. R., 4 Q. B. D., 685.
(3) (1889) I. L. R., 16 Cal., 584.

The application was to be appointed as guardian of the person and property of the widow of the deceased Joti Prasad. The said widow, Musammatt Reoti, is a girl of only 12 or 13 years of age. She has been up to this time apparently in the custody of her father. Under these circumstances the court below considered it only expedient that she should remain under that custody and not under the custody of this admittedly very distant relative. On behalf of Tota Ram, who has appealed from the order of the District Judge refusing his application and appointing the father Ram Charan as guardian, our attention is called to the case of *Khudiram Mookerjee v. Bonwari Lal Roy*, (1). In that case the learned Judges held that—under the text of Narada cited in the Dayabhaga, to the effect that when the husband is deceased, his kin are the guardians of his childless widow—if no other reason is made out against the husband's kin, preference should be given to them over the widow's paternal relations when a certificate of administration is required. No text has been cited to us from the Mitakshara or the Mitakshara school of law, but in a matter of this kind the real test which a court has to apply is the test laid down in section 17 of Act VIII of 1890. The point the courts have to consider is what will be for the welfare of the minor. We think it by no means for the welfare of the minor that a girl of twelve or thirteen should be relegated to the guardianship of a distant relative when she has already at her own door a guardian and is living happily under the guardianship of her own father. The court below has exercised a very proper discretion in the matter. We are not prepared to interfere with the order of the court below and dismiss the appeal with costs.

Appeal dismissed.

(1) (1889) I. L. R., 16 Calc., 584.

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