APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

1927.

Nov., 2.

SAIYID MUHAMMAD FARIDUDDIN AHMAD

v.

SAIYID AHMAD ABDUL WAHAB.*

Guardian and Wards Act, 1890, (*Act VIII of* 1890), *sections* 34, 41 *and* 45—*guardian, failure of, to pay the sum found due under section* 34(*d*)—*Court, jurisdiction of, to impose fine—section* 45(1)(*b*), *scope of.*

The Court has jurisdiction to investigate the accounts exhibited by a guardian under section 34(*c*), Guardian and Wards Act, 1890, to amend them by striking out objectionable items and to direct the guardian to pay the balance due on a true and just account, and, on his failure to pay the balance as found by the Court under section 34(*d*), it has jurisdiction to impose a fine on the guardian under section 45(1)(*b*).

Sita Ram v. *Musammat Govindi* (1), followed.

Jagananth Panja v. *Mahesh Chandra Pal* (2), dissented from.

Musammat Abasi Begum v. *Musammat Yaquti Begum* (3), and *Hari Krishna Chettair* v. *Govindarajulu Naimker* (4), referred to.

Appeal by the guardian.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

L. N. Singh and *Sarjoo Prasad*, for the appellant.

Hasan Jan and *Saiyid Izhar Hussain*, for the respondent.

*Appeal from Original Order nos. 207 and 237 of 1926, from the orders of A. C. Davies, Esq., I.C.S., District Judge of Patna, dated the 5th July and 26th August, 1926.

(1) (1924) I. L. R. 46 All. 458.

(2) (1916) 36 Ind. Cas. 286.

(3) (1925) I. L. R. 4 Pat. 264.

(4) (1926) 50 Mad. L. J. 278.

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KULWANT SAHAY, J.—This is an appeal on behalf of Saiyid Muhammad Fariduddin who was appointed by the District Judge of Patna to act as guardian of his minor children Azizuddin and Musammat Umatul Rasul under the Guardians and Wards Act. Musammat Umatul Rasul was married to the respondent Saiyid Ahmad Abdul Wahab in February, 1925, and in July, 1925, he made an application before the District Judge for removal of Fariduddin and for his own appointment as guardian of his wife and for examination of the accounts of Fariduddin. The learned District Judge appointed a pleader commissioner to examine and audit the accounts of the guardian for the period from 1918 up to 1925. The learned Commissioner examined the accounts in great detail and he reported that a sum of Rs. 2,326-11-2 ought to be the balance in the hand of the guardian on account of the minor Umatul Rasul. According to the account submitted by the guardian nothing was due to the estate of the minor.

Objections were taken to the report by the guardian as well as by Abdul Wahab and the learned District Judge, after consideration of the objections on both sides and after scrutiny of the accounts, has held that a sum of Rs. 4,434-4-7 is due to the estate of the minor Umatul Rasul from the guardian and he ordered that the guardian Fariduddin do deposit in Court the sum of Rs. 4,434-4-7 within one month to be placed in deposit in a bank to the credit of the minor. Appeal no. 207 of 1926 is directed against this order of the District Judge which is, dated the 5th July, 1926.

The guardian failed to deposit the amount in Court as directed and the learned District Judge by his order, dated the 26th August, 1926, imposed a fine of Rs. 100 upon the guardian and observed that if the fine and the balance found due be not deposited within ten days the question of a daily fine will be considered. Appeal no. 237 of 1926 is directed against this order of the District Judge imposing the fine.

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Mr. Lakshmi Narayan Singh on behalf of the appellant has taken us through the whole of the accounts and we have been referred to the report of the commissioner on most of the items attacked by him.

The first item consists of the marriage expenses of the minor. The learned District Judge has wholly disallowed the marriage expenses. The Commissioner was also of opinion that nothing should be allowed to the guardian on account of the marriage expenses. The case of the appellant is that he spent a sum of Rs. 5,766 and odd over the marriage of his minor girl. The learned District Judge points out that the proper course which ought to have been taken by the guardian was to have applied to the Court for sanction before incurring the expenses relating to the marriage. That would no doubt have been the proper course. The Commissioner, although he disallowed the item relating to the marriage expenses, found that the account as given by the guardian relating to the marriage expenses was correct so far as the amount of expenditure incurred was concerned. The amount, however, is certainly very excessive. In my opinion a reasonable amount ought to be allowed as the marriage expenses of the minor. Mr. Hasan Jan with his usual fairness has conceded that Rs. 750 would be a reasonable sum to allow for marriage expenses. It appears, however, from the accounts that a sum of Rs. 245-12-0 had been received by the guardian as salami or presents at the time of the marriage and the Commissioner observes that this was by way of an aid as was the custom among Muhammadans towards the expenses of the marriage. The Commissioner did not allow the sum of Rs. 245-12-0 to be credited to the account of the minor as he had disallowed the entire marriage expenses. When it is found that Rs. 245-12-0 had been received by the guardian towards the expenses of the marriage this sum ought to be deducted from the sum of Rs. 750 which we consider to be a reasonable sum to allow for marriage expenses. The result is that a sum of

Rs. 504-4-0 will be allowed for marriage expenses after deducting the money received as salami.

The next item relates to the items covered by certain mortgages. It appears that the guardian raised a certain sum of money by mortgaging the property of the minor. The mortgages were effected without the sanction of the Court, and in one case inspite of the express order of the Court refusing sanction. The Commissioner refused to credit the estate of the minor with the sum raised by the guardian on mortgage of the minor's property. The learned District Judge, however, although he found that the mortgages were invalid inasmuch as they had been effected without the sanction of the Court, yet directed that the money that was received by the mortgage ought to be credited to the minor. He, therefore, directed that a sum of Rs. 1,100 which was the share of the minor be credited to the minor. Both parties here agree that this sum ought not to be credited to the minor. The mortgages are invalid so far as the minor was concerned. I do not see how the money raised under the mortgages could be credited to the minor without the minor being made liable for it. The proposal of both parties is that this sum should be excluded. I would, therefore, direct that the sum of Rs. 1,100 be excluded altogether.

The next item is the salary of a cook employed in the family. Expenditure on account of the cook for the years under account comes up to Rs. 604-11-9. The Commissioner allowed a sum representing the salary of the cook at the rate of Rs. 24 a year and a certain sum on account of the fooding expenses. The learned District Judge has disallowed the whole amount. It is conceded on behalf of the respondent that a quarter of the amount ought to be allowed to the guardian. Credit will, therefore, be given to the guardian for one-fourth of Rs. 604-11-9 on account of the cook.

The next item relates to the expenses for clothes and shoes supplied to the minor during the years under

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account. The Commissioner allowed Rs. 375 on this account. In his petition of objection before the District Judge the respondent objected to an item of Rs. 151-9-6 and the learned District Judge has disallowed this amount. The Commissioner went into the matter very carefully and if an extra piece of cloth or a fancy sari was supplied to the minor during the period under account there is no reason why this amount should not be allowed to the guardian. In my opinion the entire amount of Rs. 151-9-6 deducted on account of the expenses for clothes and shoes should be allowed to the guardian.

The next item relates to the expenses of the nikah ceremony. The Commissioner allowed a sum of Rs. 373 on this account. The learned District Judge has disallowed this amount wholly. Mr. Hasan Jan concedes that a reasonable amount ought to be allowed for the nikah ceremony and we fix a sum of Rs. 50 as the proper amount which ought to be allowed for the nikah.

It appears that a moglani was engaged as a tutoress to the girl and the Commissioner allowed Rs. 120 as her salary. The learned District Judge has disallowed this amount but has given no reasons for disallowing it. It is not stated that the moglani was not engaged at all. It is found that the girl was an accomplished girl and a tutor must have been engaged for her. I am of opinion that the amount should be allowed.

The other items relate to the repair of houses, village expenses, cost of foodstuffs, tailoring charges and medicine. No objection appears to have been taken on this account before the District Judge. The learned Commissioner very carefully considered these items and we are not inclined to interefere with the report of the Commissioner on these items.

Mr. Hasan Jan objects to an item of Rs. 80 which has been allowed by the District Judge on

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account of municipal taxes. He contends that the total amount of taxes paid during the years in suit amounts to Rs. 191-12-6 and the whole of this was disallowed by the Commissioner on the ground that it was not shown that the house for which the tax was paid did belong to the minor. The learned District Judge was of opinion that the house, though entered in the municipal registers in the name of the guardian, was really in part the property of the minor and he allowed a sum of Rs. 80 to be credited to the guardian for municipal taxes. Mr. Hasan Jan argues that the learned Judge was wrong in any event in allowing a sum of Rs. 80 and he ought not to have allowed anything in excess of one-fourth of Rs. 191-12-6 which represented the minor's share in the property. We are not in a position to say upon what material the District Judge found the sum of Rs. 80 to be the amount payable on account of the minor's share. No cross-objection was taken on behalf of the respondent, and we are not inclined to interfere with the learned District Judge's order.

The result is that appeal no. 207 is allowed in part and the sums specified above will be credited to the guardian and the balance of the amount will be deposited in Court. Each party will bear his own costs.

The question raised in appeal no. 237 is that under section 45, sub-section (*1*), clause (*b*), the learned District Judge had no jurisdiction to impose the fine. The contention is that under section 34, clause (*d*), the Court can call upon the guardian to pay into Court the balance due from the guardian on the accounts exhibited by him under clause (*c*) of section 34 and that no sum other than the amount shown as due in the account exhibited by the guardian can be demanded from the guardian by the District Judge under the Guardians and Wards Act and no fine can be imposed upon him for his failure to deposit any sum in excess of the amount shown by him in his account exhibited under section 34(*c*).

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Reference has been made to the decision of the Calcutta High Court in *Jagannath Panja* v. *Mahesh Chandra Pal* (1). This case no doubt supports the contention of the learned Advocate for the appellant but with very great respect to the learned Judges I am unable to agree with the opinion expressed by them in that case. Section 34 of the Guardians and Wards Act provides that where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, he shall

(*c*) if so required by the Court exhibit his accounts in the Court at such times and in such form as the Court from time to time directs.

Clause (*d*) of the section then says—

(*d*) if so required by the Court, pay into the Court, at such time as the Court directs, the balance due from him on those accounts, or so much thereof as the Court directs.

Mookerjee, J., in the case of *Jagannath Panja* v. *Mahesh Chandra Pal* (1), was of opinion that the words " those accounts " in clause (*d*) of sanction 34 refer to the accounts exhibited by the guardian under clause (*c*) of the section and the Court can require the guardian to pay into Court only such amount as is shown by the guardian to be the balance in his hand in the account exhibited by him under clause (*c*) and that the Court has no jurisdiction to call upon the guardian to pay any extra sum which it may find to be due from the guardian on a scrutiny of the accounts exhibited by him. In my opinion this is not the correct interpretation of section 34 of the Act.

In *Sita Ram* v. *Musammat Govindi* (2), Walsh, C. J., considered the decision of Mookerjee, J., in *Jagannath Panja* v. *Mahesh Chandra Pal* (1) and refused to follow it and held that the power of a Court in dealing with accounts exhibited by a guardian is not limited by such balance as the guardian chooses to show therein, and that the Court has jurisdiction to investigate the accounts exhibited, to amend them by striking out objectionable items, and to direct the

(1) (1916) 36 Ind. Cas. 286. (2) (1924) I. L. R. 46 All. 458.

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guardian to pay the balance due on a true and just account, and if he fails to pay the balance as found by the Court, he can be dealt with under section 45 of the Act. I am inclined to agree with the view taken by Walsh, A.C.J. and I am of opinion that the Court has jurisdiction to call upon a guardian to pay into Court such sum as he may find to be due after a scrutiny of the account exhibited by him. If no such power had been given to the District Judge the result would be that a scrutiny of the account submitted by the guardian would be of no use whatsoever. If the Court was bound to accept the sum as shown in the account to be actually due from the guardian and if the Court was not entitled to call upon the guardian to pay any sum in excess of what is shown in the account, it would be a mere waste of time to check and audit the account as submitted by the guardian. It is conceded that the Court had jurisdiction to check the account; and if that is so, I think that it follows that the Court has also the jurisdiction to direct the guardian to pay the sums found due on such checking of the account and to act under section 45 on his failure to do so.

The rules framed by the Calcutta High Court under the Guardians and Wards Act provided that unless otherwise directed a guardian shall not be discharged from his liabilities until he has filed and passed his accounts, and has paid into Court or as otherwise ordered, any balance which may be found to be due from him. The interpretation placed by Moorkerjee, J., on section 34 was not in accord with the previous interpretation placed upon that section by the Calcutta High Court and by the rules framed by that Court under the Guardians and Wards Act.

A similar question was raised in this Court in *Musammat Abasi Begum* v. *Musammat Yaquti Begum* (1). No doubt the question raised there was one under section 41, sub-section (*3*), of the Act; but

(1) (1925) I. L. R. 4 Pat. 264.

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the principle involved in that decision applies to the facts of the present case. There it was held that in order to enable the Court to impose a fine under section 45 of the Guardians and Wards Act for non-compliance with an order under section 41(*3*), it must be shown that the sum for the non-payment of which the fine had been imposed was actually due from the guardian, and if the guardian represents that the sum is not due, no fine can be imposed unless it is first ascertained whether the sum which he has been ordered to pay was really due from him. It was there held that it was open to the District Judge to examine the account and to ascertain the sum actually due.

In *Hari Krishna Chettair* v. *Govindarajulu Naicker* (1), the question was considered and the learned Judges appear to be inclined not to agree with the view taken by Walsh, A.C.J., in *Sita Ram* v. *Musammat Govindi* (2) and to agree with the view taken by Moorkerji, J., in *Jagannath Panja's* case (3), but the question was not decided and the observations were obiter dicta.

Mr. Hasan Jan on behalf of the respondent has contended that the word "exhibit" in clause (*c*) of section 34 indicates that the guardian is bound to prove the items contained in the account. He refers to the wording in section 41, sub-sections (*3*) and (*4*), where the word used is "deliver" and to the wording of section 34, clause (*b*), where also the word "deliver" is used. There may be some force in the contention of Mr. Hasan Jan and the word "exhibit" in clause (*c*) of section 34 may mean something more than mere filing or delivering the accounts; but it is not necessary to lay any very great stress upon the word "exhibit" in clause (*c*). The whole tenor of the Act shows that the District Judge has jurisdiction to

(1) (1926) 50 Mad. L. J. 273. (2) (1924) I. L. R. 46 All. 458.

(3) (1916) 36 Ind. Cas. 286.

examine the accounts; and if that is so, it is clearly within the jurisdiction of the District Judge to call upon the guardian to pay into Court any sum that he may find due upon a true account of the affairs of the minor. I am, therefore, of opinion that the learned District Judge was within his jurisdiction in imposing the fine. On the merits, however, having regard to the fact that a substantial portion of the amount disallowed by the District Judge has been allowed by this Court, it is not proper to impose a fine upon the guardian in the present case.

The order imposing the fine is, therefore, set aside. It will no doubt be open to the District Judge to act under this section if the guardian again fails to deposit the amount found due within the time to be fixed by him.

MACPHERSON, J.—I agree.

APPELLATE CRIMINAL.

Before Jwala Prasad and Ross, JJ.

HAKIM WAJID ALI

v.

KING-EMPEROR.*

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Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 162—*witness tendered by prosecution—cross-examination declined—witness discharged—application for copy of statement made to police, accused not entitled to.*

Where a witness, tendered but not examined in chief by the prosecution, is not cross-examined, the accused is not entitled to a copy of the statement made by the witness in the course of the police investigation.

In the course of a jury trial in the Session Court it transpired that a witness tendered by the prosecution for cross-examination on the 1st June had been examined twice during

*Criminal Appeal no. 152 of 1927, from a decision of Amar Nath Chattarji, Esq., Assistant Sessions Judge of Patna, dated the 18th of July, 1927.