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as they think fit to throw discredit upon the statements in the petition. The present order of adjudication is vacated without prejudice to such order as the Judicial Commissioner may make. The costs of this hearing will abide the result.

FAZL ALI, J.—I agree.

COURTNEY
TERRILL,
C. J.

Appeal allowed.

Case remanded.

APPELLATE CIVIL.

Before Khaja Mohamad Noor and Dhule, JJ.

SUCHIT CHAUDHURI

v.

HARNANDAN SINGH.*

Hindu Law—guardian of infant, whether can contract loans on behalf of the minor for the latter's necessities and benefit—guardian, whether can impose personal liability on the minor—minor's estate, whether is liable for the debt.

A guardian of a Hindu infant has power to contract loans on behalf of the minor for the latter's necessities and benefit and, although the guardian cannot impose any personal liability, on the minor, the estate of the minor is liable for such a debt.

Padma Krishna Chettiar v. Nagamani Ammal,⁽¹⁾ followed.

Kashi Prasad Singh v. Akleshwari Prasad Narain Singh,⁽²⁾ distinguished.

Jodhi Singh v. Chhotu Mahto⁽³⁾, referred to.

* Appeal from Appellate Decree no. 1552 of 1930, from a decision of M. Muhammad Shamsuddin, Additional Subordinate Judge of Shahabad, dated the 10th November, 1930, confirming a decision of Babu Nanda Kishore Chaudhuri, Munsif of Shahabad, dated the 26th September, 1929.

(1) (1915) 30 Ind. Cas. 574.

(2) (1920) 2 Pat. L. T. 35.

(3) (1926) 7 Pat. L. T. 732.

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Appeal by the defendant.

The facts of the case material to this report are stated in the judgment of the Court.

Mahabir Prasad and *D. N. Varma*, for the appellant. 1932.
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K. P. Jayaswal and *Anand Prasad*, for the respondent.

KHAJA MOHAMAD NOOR AND DHAVLE, JJ.—This is an appeal by the second defendant in a suit brought for the recovery of two loans: one of Rs. 100 and the other of Rs. 342 contracted on his behalf by his mother who was defendant no. 1 in the suit and who is found to have been the guardian of the appellant at the time of the loans. Both the defendants denied the loans and this has been concurrently found against them by the lower Courts. The appellant also urged that he was not a minor at the time the loans are said by the plaintiff to have been advanced to the appellant's mother, but this also has been negatived by the two lower Courts. A hand-note was executed in connection with each loan by the appellant's mother who did not describe herself in it as guardian of the appellant, but such description is not always essential and it is a question of fact in each case whether the person was acting as guardian, and both the Courts below have found that the appellant's mother did in fact act as guardian on appellant's behalf in connection with these loans. The first hand-note stated that the money was wanted for the purchase of bullocks and the second hand-note merely spoke of khas expenses. The evidence, however, was that money was taken on the second occasion for purchasing bullocks and seed grains and for improving kasht lands by removing sand from them. The trial Court found that the moneys had been taken by the appellant's guardian for his "necessities and benefit". The lower appellate Court has substantially endorsed this finding by observing that

"the loans in suit were borrowed by defendant no. 1 as guardian of her son defendant no. 2 for necessities benefitting him."

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The learned Advocate for the appellant relies on *Kashi Prasad Singh v. Akleshwari Prasad Narain Singh*(¹), a decision that was cited below and in which it was held that a guardian cannot bind the estate of a minor by a personal covenant and that, therefore, a hand-note executed by the guardian of a minor cannot bind the minor's estate. I ought to have said that while the trial Court gave the plaintiff a decree against both the defendants without any qualification, the lower appellate Court modified that decree by directing that as far as the appellant was concerned the decree should be executed against his estate only, that is to say, not against his person also. The case of *Kashi Prasad*(¹) does not, however, help the appellant, and the reason is this. In *Jodhi Singh v. Chhotu Mahto*(²) which has been referred to by the learned Subordinate Judge the case of *Kashi Prasad Singh*(¹) was distinguished as not a suit for the price of necessaries. A more important distinction for the purposes of the present case is that the suit in *Kashi Prasad Singh v. Akleshwari Prasad Narain Singh*(¹) was a suit on the hand-note, while the present is a suit not on the hand-notes but on the loans that are evidenced by the hand-notes found to have been executed by appellant's mother. The plaint speaks of defendant no. 1 acting for herself and as guardian of defendant no. 2 and karta of the joint family—allegations which would have been entirely unnecessary if it was intended to proceed on the hand-notes alone. That the suit was regarded in this light by both the lower Courts is clear from their discussion of the issue whether defendant no. 2 was liable for the loans. Learned Counsel has laid stress on the fact that the hand-notes did not purport to charge the estate of the minor, but the documents in question would not have been hand-notes if they had purported to do so. The real question in the

(1) (1920) 2 Pat. L. T. 35.

(2) (1926) 7 Pat. L. T. 732.

case is whether a creditor has any remedy against the person or estate of a minor in respect of a loan advanced by him to the minor's guardian for the necessities and benefit, as the trial Court put it, of the minor. That the guardian of a Hindu infant has power to mortgage or even sell the estate of the minor for the necessities of the estate or for the benefit of the estate is of course unquestionable. If the guardian has this power, he must clearly have power also to contract loans on behalf of the minor. It may be that for such loans he is personally liable, but the question is whether the minor's estate will also not be liable, provided of course it is shown that the loans were taken for purposes binding on the minor's estate. It is also beyond question that the guardian cannot impose any personal liability upon the minor; and unless the creditor could in a proper case proceed against the estate of the minor, the position would be that as against a minor a creditor would be left without any remedy at all in respect of a loan advanced by him on the minor's account to the minor's guardian. That cannot and has never been held to be the law. All that was laid down in *Kashi Prasad Singh v. Akleshwari Prasad Narain Singh*(¹) was that if the creditor chooses to sue on the guardian's hand-note as such, he cannot obtain a decree against the minor's estate.

Learned Counsel has next assailed the concurrent finding of the lower Courts that the loans were taken for the necessities and benefit of the appellant. He has in this connection relied on *Kandhia Lal v. Muna Bibi*(²) and contended that the finding about the necessities and benefit of the appellant is vitiated by reason of the failure of the plaintiff to prove that he had made proper enquiries as to the necessities of the minor before advancing the loans in question. But

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(1) (1920) 2 Pat. L. T. 35.

(2) (1897) I. L. R. 20 All. 135.

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what are the circumstances? The plaintiff knew, and had dealings with, the family for a long time before the loans in suit. We are told that he claims to have known the fields of the appellant also, and this may be believed all the more readily as both the plaintiff and the appellant are from the mufassil and apparently live not very far from each other. The appellant is the only son of his parents. The family was in an impecunious condition, and the learned Subordinate Judge has referred to the facts that the father of the appellant had previously mortgaged some lands to the plaintiff and that appellant's mother had also had occasion to do so besides selling some of them after the institution of the suit. The evidence is that appellant's mother asked for the money for bullocks, seed grains and the improvement of kasht lands by removing sand from them. These are obviously not purposes of luxury to an agriculturist, and there is no indication that the mother was indulging in a speculative business—say, in bullocks. The circumstances were such that the creditor may well have believed the mother's representations, and it was open to the Courts to proceed on that footing unless it had been the case of the appellant that the mother was in fact raising money for her own purposes, though nominally on behalf of her only son. It is not contended that any such suggestion was made in the Courts below. It seems to us further that the lower Courts had ample material before them to come to the conclusion that the moneys were borrowed by the appellant's mother for necessary purposes. We do not see any error of law in that finding. The case does in fact seem to be indistinguishable from *Padma Krishna Chettiar v. Nagamani Ammal*⁽¹⁾ which has been referred to by the learned Subordinate Judge.

We, therefore, dismiss this appeal with costs.

Appeal dismissed.

(1) (1915) 30 Ind. Cas. 574.