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surrendering a moiety of their inheritance to persons who were not entitled to it.

Their Lordships have no hesitation in holding that the compromise invoked by the appellants cannot bind the daughters of *Mussammat* Jiwani. They will, therefore, humbly advise His Majesty that the appeals should be dismissed with costs.

*C. S. S.*

*Appeal dismissed.*

Solicitors for the appellants: *Nehra & Co.*
Solicitors for the respondents: *Hy. S. L. Polak & Co.*

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## LETTERS PATENT APPEAL.

*Before Addison and Din Mohammad JJ.*

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Dec. 6.

*MUSSAMMAT* NAZIR BEGAM—Appellant,

*versus*

GHULAM QADIR KHAN AND OTHERS— Respondents.

**Letters Patent Appeal No. 108 of 1937.**

*Guardians and Wards Act (VIII of 1890), SS. 4 (5) (b) (ii), 12 (1) and 25 — Guardian, appointment of — Minor — temporary removal — Jurisdiction of Court — Residence, meaning of — Custody, constructive.*

*Mst.* N. applied at Multan for appointment as guardian of the person of her minor daughter, aged about 3 years, who was taken away by a female relation to Bahawalpur with the connivance of other relations (Respondents). The trial Judge dismissed the application on the ground, *inter alia*, that the Multan Court had no jurisdiction as the minor was residing at Bahawalpur. On appeal, a Single Judge found that the Multan Court had jurisdiction as the minor, inspite of her sojourn in Bahawalpur, ordinarily resided at her parental house in Multan, within the meaning of section 9 of the Act and appointed her mother as guardian of the minor as prayed for. *Mst.* N. applied under sections 12 (1) and 25 before the Guardian Judge at Multan for the custody of the minor.

The Court dismissed the application on the ground that the minor had throughout been residing outside the jurisdiction of the Court. On appeal the order was upheld by a Single Judge. In an appeal under the Letters Patent:—

*Held*, that assuming that the minor was at the time actually residing in Bahawalpur, the Multan Court had jurisdiction to make an order contemplated by sections 12 (1) and 25 of the Act as the minor should be taken to have been residing, for the time being, at Multan within the meaning of section 4 (5) (*b*) (*ii*) of the Act and as a temporary and incidental removal of the minor does not oust the jurisdiction of the Court within the local limits of whose jurisdiction the minor ordinarily resides.

*Sarat Chandra Chakarbati* v. *Forman* (1), *Anilabala Chowdhurani* v. *Dhirendra Nath Saha* (2) and *Mubarik Shah Khan* v. *Wajeh-ul-Nissa* (3), relied upon.

*Maung Ba Thein* v. *Ma Than Kin* (4), and *Annie Besant* v. *Narayaniah* (5), distinguished.

*Held*, that the application of section 12 is not barred after the appointment of the guardian as the proceedings are not complete until the guardian has obtained the custody of the minor.

*Wadhawa Singh* v. *Mst. Malan* (6) and *Utma Kuar* v. *Bhagwanta Kuar* (7), relied upon.

*Indar Singh* v. *Mst. Kartar Kaur* (8), dissented from.

*Held further*, that from the time of his appointment, the guardian is considered to have the constructive custody of the minor within the meaning of section 25 (1) even if the minor has never been physically handed over to him.

*Ulfat Bibi* v. *Bafati* (9), relied upon.

*Letters Patent Appeal against the judgment of Coldstream J. in First Appeal No. 122 of 1937, dated 7th July, 1937, affirming that of* Sheikh *M. A. Latif*,

(1) I.L.R. (1890) 12 All. 213.
(2) I.L.R. (1921) 48 Cal. 577, 586.
(3) 53 P.L.R. 1902.
(4) 1929 A.I.R. (Rang.) 129.
(5) I.L.R. (1915) 38 Mad. 807 (P.C.).
(6) 13 P.R. 1897.
(7) I.L.R. (1915) 37 All. 515.
(8) (1929) 119 I.C. 423.
(9) I.L.R. (1927) 49 All. 773, 777.

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*Guardian Judge, Multan, dated 5th May, 1937, dismissing the application.*

MUHAMMAD AMIN, for Appellant.

MEHR CHAND MAHAJAN, for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—The appellant, *Mussammat* Nazir Begam, was married to one Khan Abdul Karim Khan of Multan. She had a daughter from him of the name of *Mussammat* Fahmida Khanam. By another wife Khan Abdul Karim Khan had five sons. Sometime ago he died and at the time of his death *Mussammat* Fahmida Khanam was about three years of age. On the 14th May, 1935, *Mussammat* Nazir Begam made an application to the Court of the Subordinate Judge, Multan, for appointment as guardian of her minor daughter mentioning all the five sons of the deceased as well as some others as the persons related to the minor and thus interested in her. The five sons of the deceased resisted the application on various grounds. It was contended *inter alia* that the minor had, in accordance with the decision of all the members of the family, been made over to one *Mussammat* Mehan Bibi, a female relative of the deceased, and was in her custody and inasmuch as *Mussammat* Mehan Bibi was residing in Bahawalpur the Multan Court had no jurisdiction to entertain the application under section 9 of the Guardians and Wards Act. Thereupon *Mussammat* Mehan Bibi was also brought on the record and she too joined in the contest. The Subordinate Judge on the plea of jurisdiction as well as on the other pleas raised in the case found in favour of the contesting respondents and dismissed the application. On appeal to this Court, Skemp J. (1) came to the conclusion that *Mussammat* Mehan Bibi

(1) I. L. R. [1937] Lah. 426.

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was merely a nominee of the contesting respondents and as she had taken the minor to Bahawalpur only with their permission, the minor could be taken to be residing ordinarily in Multan and that consequently the jurisdiction of the Multan Court was not ousted. Holding that it was for the welfare of the minor that she should be made over to her mother, he allowed the appeal and appointed *Mussammat* Nazir Begam guardian of the person of the minor. Thereupon, Ghulam Qadir Khan, one of the contesting respondents, appealed to this Court against the decision of Skemp J. but his appeal was dismissed *in limine* on the 1st March, 1937. In the meantime on the 2nd February, 1937, *Mussammat* Nazir Begam made an application to the Court of the Subordinate Judge at Multan under section 12, sub-section (1) and section 25 of the Guardians and Wards Act asking for the custody of the child. In that application three out of the five sons of Khan Abdul Karim Khan only were impleaded presumably because they were the only major sons of the deceased. On the 4th February, 1937, *Mussammat* Nazir Begam was also granted a guardianship certificate under the order of the Subordinate Judge.

The respondents once more resisted the application on the ground that the Court at Multan had no jurisdiction as the minor had throughout been residing in Bahawalpur and had never returned to Multan. This plea found favour with the Court below and *Mussammat* Nazir Begam's application was dismissed. She presented an appeal to this Court which came for hearing before Coldstream J. The learned Judge also agreed with the Subordinate Judge in holding that the Multan Court had no jurisdiction and dismissed the appeal. Hence this Letters Patent Appeal.

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The only question that falls for determination in this case is whether in view of the definition of the words "the Court" given in sub-section 5 (*b*) (*ii*) of section 4 of the Guardians and Wards Act, the Court at Multan had jurisdiction to make an order contemplated by sections 12 (1) and 25 of the Guardians and Wards Act assuming that the minor was at that time actually living in Bahawalpur. The material portion of section 12 (1) is as follows:—

"The Court may direct that the person, if any, having the custody of the minor, shall produce him * * *." The marginal note to this section is as follows:—"Power to make interlocutory order for production of minor and interim protection of person and property." The relevant portion of section 25, sub-section (1) runs as follows:—"If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward * * * may make an order for his return, and, for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian." Section 4 (5) (*b*) (*ii*) defines "the Court" in the following terms:—"Where a guardian has been appointed or declared in pursuance of any such application—(*i*) the Court which * * * appointed or declared the guardian * * * * ; or (*ii*) in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides;"

It is urged on behalf of the respondents that reading all these provisions of law together the only conclusion that follows is that after the order of appointment is made, the only Court which can entertain any application in any matter relating to the person

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of the ward is the Court where the minor actually is at the time and that no other Court can issue any order in that respect. It is further urged that section 12 comes into play only when the proceedings are pending and that it has no application after the final order appointing a guardian has been made. In support of the first proposition reliance is placed on *Maung Ba Thein* v. *Ma Than Kin* (1) and *Annie Besant* v. *Narayaniah* (2), and in support of the second proposition reference is made to *Indar Singh* v. *Mst. Kartar Kaur* (3).

In *Maung Ba Thein* v. *Ma Than Kin* (1), in a case in which a minor had been living with her mother at M. or S. and the application under section 25 of the Guardians and Wards Act had been made by the father at H., a Single Judge of the Rangoon High Court held that the District Court of H. had no jurisdiction to make any order under section 25 in view of the definition of the words "the Court" given in section 4 (5) (*b*) (*ii*). The minor in that case had been living with her mother for about seven years at S. or M. and had never come to H. to reside with her father during that period. This case, therefore, is distinguishable on facts.

In *Annie Besant* v. *Narayaniah* (2) a regular suit was being tried by the High Court, Madras, on its original side for the custody of the minors who had long before the institution of the suit been taken to England by the defendant. Their Lordships of the Privy Council held that the suit was not maintainable and in connection with the jurisdiction of the Court observed as follows:—

"The District Court in which the suit was instituted had no jurisdiction over the infants except such

(1) 1929 A. I. R. (Rang.) 129. (2) I. L. R. (1915) 38 Mad. 807 (P.C.).
(3) (1929) 119 I. C. 423.

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jurisdiction as was conferred by the Guardians and Wards Act, 1890. By the ninth section of that Act the jurisdiction of the Court is confined to infants ordinarily resident in the District. It is in their Lordships' opinion impossible to hold that infants who had months previously left India with a view to being educated in England and going to the University of Oxford were ordinarily resident in the District of Chingleput."

That judgment does not help the respondents inasmuch as in this case it has once been found with reference to section 9 of the Act by a learned Judge of this Court that the minor in spite of her sojourn in Bahawalpur ordinarily resided in Multan for the purposes of section 9 of the Guardians and Wards Act. That judgment is binding on this Court so far as it goes and we cannot go behind it in any manner. Moreover, in the case before their Lordships of the Privy Council the minors were of an age when they "could exercise a volition of their own, while in the case before us the minor is less than four years of age and cannot be said to reside anywhere of her own accord.

In *Indar Singh* v. *Mst. Kartar Kaur* (1) it was held by Dalip Singh J. that section 12 did not apply after the appointment had been made inasmuch as it only contemplates interlocutory orders but with all respect we are inclined to hold that so long as the custody of a minor is not actually made over to the guardian the proceedings do not terminate and the applicability of section 12 is not barred.

A similar view of section 12 was taken by a Division Bench of the Chief Court, Punjab, composed of Stogdon and Reid JJ. in a case reported as

(1) (1929) 119 I. C. 423.

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*Wadhawa Singh* v. *Mst. Malan* (1) Reid J. who delivered the judgment observed :—

" It cannot be the intention of the Legislature that the Court should have no power to make the minor over to the guardian appointed by it, and there is no reason why the provisions of section 12 (*i*) should not be applicable after, as well as before, a guardian is appointed."

A Division Bench of the Allahabad High Court consisting of Chamier and Piggott JJ. in a case reported as *Utma Kuar* v. *Bhagwanta Kuar* (2) put a similar construction on section 12. The learned Judges remarked :—

" We are satisfied that the minor became a ward of the Court from the date of the order appointing *Mst.* U. K. to be her guardian and on general principles the District Judge became thereby empowered to enforce, for the benefit of the minor, all the provisions contained in the Guardians and Wards Act. * * * * * * On the whole if the matter is to be dealt with as a technical question with reference strictly to the wording of Act VIII of 1890, the preferable view seems to us to be that the Court below could have taken action, and was bound to take action, under section 12 of the Act. In view of the provisions of section 24 of the Act to which we have already referred, the appointment of *Mst.* U. K. to the guardianship of the person of this minor ward, could not be regarded as complete until she had obtained effective possession of the person of the ward, so as to enable her to discharge the duties laid upon her by that section. It is quite true that section 12 of the Act provides for the temporary custody of a minor in

(1) 13 P. R. 1897. (2) I. L. R. (1915) 37 All. 515.

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the interim between application being made to the Court and the final conclusion of the necessary proceedings for the appointment of a guardian of the person of the minor; but as we have already pointed out, those proceedings are really not complete until the guardian of the ward has obtained the custody of the minor. We think, therefore, that it was still open to the Court below to take action under section 12 of the Act."

On the question of residence we are disposed to hold that the minor for the purposes of the application made to the Subordinate Judge at Multan should be taken to have been residing for the time being in Multan. It is not denied that the paternal family house of the minor is in Multan and it is also not disputed that it was with the consent or connivance of the respondents that she was made over to *Mussammat* Mehan Bibi after the death of the minor's father. In fact it was found by Skemp J. that *Mussammat* Mehan Bibi was only a nominee of the respondents. It follows, therefore, that the custody of the minor was with the respondents; and although for their own convenience or to serve their own purpose they had made her over to a female relative of theirs who resides in Bahawalpur, the minor is still under the control of the respondents and can be recalled at any time they like.

As long ago as 1889, it was held by a Division Bench of the Allahabad High Court composed of Straight and Mahmood JJ. in *Sarat Chandra Chakarbati* v. *Forman* (1) that when a minor had been removed by the respondents from Allahabad to Lahore the jurisdiction of the Allahabad Court had not been ousted. Straight J. in the course of his judgment

(1) I. L. R. (1890) 12 All. 213.

observed, and very rightly too, if we may say so with all respect :—

" I do not think that the fact that at the time of the trial in the Judge's Court the minor was out of the jurisdiction is of any material importance if upon the facts stated in the petition it appeared that the defendants were responsible for his removal. As I pointed out at the hearing, to place so narrow a construction upon the statute would render it practically inoperative and enable persons bent upon defeating it by successive removals of the person of a minor from one place to another to deprive any Court of jurisdiction. Apart from the terms of section 17 of the Civil Procedure Code, if the exigencies of the case required it I should have no hesitation in holding that the minor having been in the custody and guardianship of a person within the jurisdiction of the Judge of Allahabad, that officer under Act IX of 1881 had full power to entertain and deal with the application of the appellant."

Similarly in a case reported as *Mahomed Hossein* v. *Akbur Hossein* (1) Loch J. as a member of a Division Bench of the Calcutta High Court held that the word " residence " used in section 5, Act 40 of 1858, is not the place where the minor may be dwelling at or about the time when the application for a certificate under the Act is made, but the paternal family house or the family residence of the minor in which every member of the family has an interest and in which they usually reside. The other member of the Bench, Ainslie J., was of the opinion that though ordinarily that might be taken to be the meaning of the word, yet circumstances might arise in which it might be

(1) (1872) 17 W. R. 275.

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taken to mean otherwise. "Residence," as remarked in several English judgments which have been followed by the High Courts in India on several occasions, "is an elastic word, of which an exhaustive definition cannot be given; it is differently construed according to the purpose for which enquiry is made into the meaning of the term; the sense in which it should be used is controlled by reference to the object." [See *Anilabala Chowdhurani* v. *Dhirendra Nath Saha* (1)].

To place a restricted meaning in cases like the present on the words "for the time being ordinarily resides" so as to interpret them to mean where the minor actually is at the time of the application, would be tantamount to rendering nugatory all the provisions of the Guardians and Wards Act and to making the law helpless against the machination of recalcitrant persons who do not propose to part with the minor in favour of the appointed guardian. This is especially so in the Punjab where the British Indian States are so closely situated that any person would be able to flout the authority of the highest Tribunal of the land by merely walking with the minor into a neighbouring State. Any interpretation that leads to these results should, therefore, be tried to be avoided.

As remarked in Maxwell on the Interpretation of Statutes at page 198:—

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the

(1) I. L. R. (1921) 48 Cal. 577, 586.

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sentence. * * * * * * * where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. The rules of grammar yield readily in such cases to those of common sense."

The interpretation that we propose to place on the words of section 4 (5) (*b*) (*ii*) is the only interpretation that can save this piece of legislation from palpable absurdity. The Statute was intended to protect minors from those persons who could not properly safeguard their interests and if they are permitted to avoid the orders passed by a competent Court by conveniently removing the minor out of the jurisdiction of the Court, the Statute would remain a dead letter and it could never have been the intention of the Legislature that this should be so. Orders of Courts of law must be enforced and if they can be enforced reasonably against persons who reside within the jurisdiction of the Courts, they should be so enforced and the offenders should not be allowed to escape merely on the ground of an unreasonable technicality. Apart from this construction being equitable, it is supported by authority.

In *Mubarik Shah Khan* v. *Mst. Wajeb-ul-Nissa* (1) a minor born at Khan Koda where her mother was living then was brought by her to Delhi. After a few weeks the mother died and a relative of the minor with whom she was then residing applied to the Court at Delhi for appointment as guardian of the minor. Robertson J. remarked that treating the matter from an ordinary common sense point of view it must be held that the minor ordinarily resided in Khan Koda

(1) 53 P. L. R. 1902.

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and that her presence in the petitioner's house was incidental and temporary only. We can similarly treat the minor's residence in Bahawalpur incidental and temporary and find that her permanent residence is at the house wherefrom she was removed by the respondents with the reprehensible object of evading the Law and nullifying the orders of the Courts in British India.

There is another way of looking at the matter. A minor who is not delivered to the guardian after he has been appointed by a competent Court, can be treated as having left or been removed from the custody of the guardian under section 25 (1) of the Guardian and Wards Act. As remarked by a Division Bench of the Allahabad High Court in *Ulfat Bibi* v. *Bafati* (1), " the judicial interpretation has taken a merciful view of the matter so as to prevent the Courts being rendered powerless and has treated the custody mentioned in section 25 as constructive custody." We are in respectful agreement with the view expressed by the Allahabad High Court and consider that that is the only reasonable construction that can be put upon section 25; otherwise, there would be a lacuna in the Act which would tend to render useless and ineffective all the provisions of the Guardian and Wards Act relating to the person of the minor. If a minor is not present at the time of the order appointing the guardian and physically handed over to the guardian at the time of his appointment, there would be no provision of law to enable the Court to do so afterwards.

We, therefore, hold that the Court at Multan had jurisdiction to entertain the application made to it under sections 12 (1) and 25 of the Guardians and

(1) I. L. R. (1927) 49 All. 773, 777.

Wards Act and should have called upon the respondents to produce the minor before it so that she could be made over to her mother who had been appointed guardian by this Court. Section 45 (1) (*a*) of the Guardians and Wards Act provides ample means for enforcing an order under section 12 and if the respondents refuse to produce the minor in Court in compliance with its order, they can even be sent to the civil jail and detained there so long as they do not obey the order of the Court; a disregard of an order under section 25 also entails the same consequences.

We accordingly allow the appeal and direct the Subordinate Judge at Multan to make an order calling upon the respondents to produce the minor in Court in order to deliver her to the appellant, to fix a convenient date for that purpose and to visit the respondents after due enquiry with all the penalties provided by law if they fail to comply with his order. The appellant will get her costs from the respondents in all the Courts.

*A. N. K.*

*Appeal accepted.*