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BYRA'MJI BHIMJIBHÁI v. JAMSETJI NOWROJI KAPADIA.

With regard to presents made after marriage, such as those said to have been made on or during pregnancy, or on the birth of the first child, or on the first birthday of the first child, or on the thread ceremony of the plaintiff's cousins, &c., &c., which are also claimed in the plaint, I cannot hold that any such custom as is contended for by the plaintiff is proved. No evidence is adduced of any, and it is only natural to suppose that there would be none, since at these times the husband and wife would hold a distinct individuality and a defined position with regard to each other, and it would be as easy to give to the one as to the other, or to the two jointly, according to whomsoever the donor might in each case wish his present to go. Most certainly the custom cannot be further extended, as the plaintiff here wishes to do, so as to embrace presents, such as toys and ornaments, which were given expressly to and for the use of his children, either soon after their birth, or when they were a year old.

[The learned Judge then considered and found on the various questions of fact in the case, and finally gave judgment for the plaintiff as to a part of his claim. As to the clothes, His Lordship found that only one set of those claimed could be called a costly or special set, and that, assuming these to have been presented, it was impossible to presume their existence now,—that is, some thirty-two years after the date of their presentation—or to assess their money value.]

Attorneys for the plaintiff:—Messrs. *Chalk, Walker and Smetham.*

Attorney for the defendants:—Mr. *J. C. Cáma.*

ORIGINAL CIVIL.

Before Mr Justice Farran.

JAIRA'M LUXMON AND OTHERS, PETITIONERS.

1892. *August 27.*

Guardian and infant—Inherent power of High Court to appoint guardian—Guardians and Wards Act (VIII of 1890)—Appointment of guardian when for the benefit of the infant.

The High Court has the power, irrespective of the provisions of the Guardians and Wards Act (VIII of 1890), of appointing a guardian for an infant or his estate.

A Hindu father appointed guardian of his infant sons for the purpose of raising money by the mortgage of ancestral immovable property on its appearing to the Court that by so appointing him guardian better terms were likely to be procured from the mortgagee, and the infants to that extent consequently benefited.

PETITION to the Judge in Chambers.

This was a petition by Jairám Luxmon and his two infant sons, Harishankar and Rowji, praying that the said Jairám Luxmon might be appointed the guardian of his said infant sons for the purpose of representing them in a proposed mortgage of ancestral immovable property, and for the Court's sanction to such proposed mortgage as proper and necessary and for the benefit of the said infants.

The petition set out the circumstances under which a debt of some Rs. 6,000 had been incurred by the family of the petitioners, to liquidate which the petitioners had no other means than by mortgaging or selling the ancestral immovable property proposed to be mortgaged as aforesaid. It was also stated that far better terms would be obtained by the petitioners in dealing with their ancestral property for the above purpose if the first petitioner, Jairám, were appointed guardian of his minor sons, and empowered to act for them.

Inverarity for petitioners:—In view of the recent decision in *Sham Kuar* v. *Mohánunda* [1] this petition is not headed under the Guardians and Wards Act VIII of 1890. The Court has an independent power to appoint a guardian, which is not taken away by that Act. The Supreme Court Charter, sections 41 and 42, gives that Court all the powers of the Court of Chancery, and specially the power "to appoint guardians and keepers for infants and their estates;" and the High Courts Act, 24 and 25 Vict., c. 124, sec. 9, continues the Supreme Court's powers to the High Court. The Guardians and Wards Act, sections 3 and 6, specifically preserve pre-existing powers. Hence this Court has now the power to appoint a guardian irrespective of the Guardians and Wards Act.

An infant has an estate in joint undivided property. The father, it is true, could sell without such an order as is now prayed

(1) I. L. R., 19 Calc., 301.

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for, as the debt was not for an immoral purpose, and the infants would be bound, but without this order he will not get such a good price. Hence the order prayed for is for the infants' benefit.

[FARRAN, J.:—You can scarcely say that the father has not an interest adverse to his sons in making this application.]

Not if he has the power already—as undoubtedly he has—to bind the infants' interest by a sale. This order, then, can only be for the benefit of the infants. It is true it is for his own benefit too: it is for the benefit of all the sharers.

FARRAN, J.:—I have had some doubts as to the propriety of making the order prayed for, appointing the applicant, Jairám Luxmon, guardian of his minor sons. I should have liked the point to have come up for a fuller argument before a proper tribunal. But as I must decide it, I think I should appoint the guardian as asked for. The order is likely to benefit the whole family, and, therefore, the minors, by securing better terms than would otherwise have been obtained from a purchaser or a mortgagee. But I cannot grant the rest of the petition, or sanction beforehand the contemplated mortgage. I will appoint the applicant guardian of his infant sons Harishankar and Ráoji, and then it will be for him, on his own responsibility, to do what he thinks right and proper under the circumstances of the case.

Attorneys for the applicant:—Messrs. *Mulji and Rághowji.*

ORIGINAL CIVIL.

Before Mr. Justice Farran.

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August 27.

NA'NA'BHA'I GANPATRA'O, (PLAINTIFF), *v.* JANA'RDHAN VA'SUDEOJÍ, (DEFENDANT).*

Civil Procedure Code (XIV of 1882), Sec. 248—Legal representative of a joint undivided Hindu in respect of ancestral immovable property attached in execution.

The plaintiff and his brother were joint undivided brothers possessed of certain immovable property. This property was attached in execution, but before a warrant for sale of the property was obtained the plaintiff died. The attaching creditor issued a notice, under section 248 of the Civil Procedure Code (XIV o

* Suit No. 210 of 1886.