APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Candy.

1899. *September 6.*

SHET MANIBHAI PREMABHAI (ORIGINAL PLAINTIFF), APPELLANT, *v.* BAI RUPALIBA (ORIGINAL DEFENDANT), RESPONDENT.*

Warranty—Breach of warranty—Suit on warranty—Principal and agent—Guardian—Minor—Loan obtained by guardian as such—Liability for such loan—Warranty by guardian of authority to borrow—Misrepresentation on a point of law—Contract Act (IX of 1872), Sec. 235—Guardian's liability.

Plaintiff, having lent a sum of money to one Rupaliba as guardian of her minor son Ranmalsangji, brought a suit against the minor, represented by his guardian, to recover it. In that suit a consent decree was passed, which directed the amount due to him to be recovered out of the minor's estate. On Ranmalsangji's coming of age he got the consent decree set aside, and the plaintiff had to refund the sum which he had recovered under it. Thereupon the plaintiff sued Rupaliba to recover the amount as damages for breach of warranty, alleging that she had represented to him that she had authority to incur the debt on behalf of the minor and to bind his estate, whereas she had really no such authority.

Held, that the plaintiff could not recover, there having been no such misrepresentation as would support an action for a breach of warranty.

Assuming that there was a representation, the only possible representation, if the case be treated as coming within section 235 of the Contract Act (IX of 1872), was that the defendant represented that she was the agent of her son. But as the plaintiff knew that the son was an infant, he must have been aware that any representation that defendant was her infant son's duly authorized agent was incorrect, for an infant cannot appoint an agent, and consequently no warranty, such as would support a suit, could arise out of such a representation.

Even if it were conceded that there was a representation by Rupaliba, as to her power to bind the minor's estate, it was one on a point of law, and as such, it was incapable of supporting the suit.

Beattie v. *Ebury*[1] followed.

APPEAL from the decision of Ráo Bahádur Lalubhai P. Parikh, Additional First Class Subordinate Judge of Ahmedabad.

Bhagvatsangji, the Thákor of Koth and Sánand, died in 1869, leaving a widow Rupaliba and a posthumous son Ranmalsangji.

On 24th July, 1872, Rupaliba was appointed, under Act XX of 1864, to act as guardian of the person and property of her minor son Ranmalsangji.

* Appeal, No. 51 of 1899.

(1) (1872) L. R. 7 Ch., 777 ; 7 H. L., 102.

1899.

SHET MANIBHAI v. BAI RUPALIBA.

In 1888 plaintiff lent a sum of Rs. 20,103-13-6 to Rupaliba as guardian of the minor. The money was borrowed to defray the expenses of the minor's marriage.

In 1889 plaintiff filed a suit against the minor, represented by his guardian Rupaliba, to recover the above sum.

That suit was compromised, and on the 24th January, 1890, a consent decree was passed in plaintiff's favour for Rs. 24,006-0-5. This sum was made payable by two instalments, and it was provided that, in default of payment of the instalments on the due date, plaintiff should recover the amount out of the minor's estate.

The first instalment was duly paid into Court on 22nd March, 1890. The second instalment was recovered by executing the decree against the minor's estate.

On the 15th January, 1891, the minor Ranmalsangji attained majority, and on the 14th April, 1891, he filed a suit against the present plaintiff to set aside the consent decree of the 24th January, 1890, on the ground that it had been obtained by fraud and collusion.

The Court held that the guardian Rupaliba had no authority to contract the debt on the minor's behalf without the sanction of the District Court; that the minor's estate was, therefore, not liable for the debt; and that the consent decree was, therefore, not binding on the minor. That decree was accordingly set aside. This decision was upheld by the High Court, in appeal, on 16th June, 1897.

Thereupon Ranmalsangji applied to recover the amount paid to the plaintiff under the consent decree, which had been set aside. The Court granted this application and the plaintiff had to refund Rs. 20,113-8-9 on 1st April, 1898.

On 22nd April, 1898, plaintiff filed the present suit to recover from Rupaliba personally the sum which he had been obliged to refund, together with the costs of his litigation with Ranmalsangji, amounting in all to Rs. 23,000. He sought to hold Rupaliba personally liable for this amount on the ground that there was a breach of warranty on her part, in that she falsely

1899.

SHET MANIBHAI v. BAI RUPALIBA.

represented to the plaintiff that she had authority to incur the debt on the minor's behalf and to bind his estate, when, as a matter of fact, she had none.

The Subordinate Judge dismissed the suit, holding that there was no express or implied warranty as to the guardian's authority to obtain the aforesaid loan on the minor's behalf; that the debt had not been contracted under misrepresentation; and that Rupaliba could not be held liable either under section 65 or section 235 of the Indian Contract Act.

The plaintiff appealed to the High Court.

Scott, Acting Advocate General (with him *Branson, Macpherson, Manekshah Jehangirshah*, and Messrs. *Jamaitram and Mathubhai*) for appellant:—This is a suit for breach of warranty. Defendant, as guardian of her minor son, borrowed from the plaintiff a sum of money on the occasion of her son's marriage, and represented to the plaintiff that she was appointed, under her husband's will, to act as guardian and manager of the minor's property, and had authority to contract the debt so as to bind the minor's estate. On the faith of this representation the plaintiff lent the money to defendant as guardian of the minor. The minor has now repudiated this transaction as one which his guardian had no authority to enter into on his behalf. The case falls within the principle laid down in section 235 of the Contract Act (IX of 1872). A person who professes to act as agent of another impliedly warrants that the authority he professes to have, does in point of fact exist. And he is liable to be sued on his warranty—*Collen* v. *Wright*[1]; *Firbank's Executors* v. *Humphreys*[2].

[JENKINS, C. J.:—Those cases apply where the misrepresentation relates to a matter of fact and not of law. What is the misrepresentation here?]

We say that defendant falsely represented to the plaintiff that she had authority to bind the minor's estate both as his natural guardian and as manager appointed under her husband's will.

(1) (1857) 7 E. & B., 301. (2) (1886) 18 Q. B. D., 54.

1899.

SHET MANIBHAI v. BAI RUPALIBA.

[JENKINS, C. J.:—Assuming that to be the case, the misrepresentation is one on a point of law, and as such, cannot support the action. See *Beattie* v. *Ebury*[1].]

Ganpat Sadashiv Rao for respondent was not called upon.

JENKINS, C. J. :—The plaintiff is a money-lender and he has brought this suit to recover from the defendant a sum of Rs. 23,000. The material facts are practically not in dispute ; they are very fully stated in the careful judgment of the First Class Subordinate Judge, and we need now do no more than refer briefly to the more salient of them. [His Lordship stated the facts and proceeded :—] From these facts it is manifest that, if the plaintiff were to sue the defendant on the original loan, his suit would be barred. Accordingly he has formulated his claim as one for damages arising out of a breach of warranty. To support it, reliance has been placed on the principles enunciated in *Collen* v. *Wright* [2] and *Firbank's Executors* v. *Humphreys*[3], where it has been laid down that an agent impliedly warrants his authority and is liable to be sued on his warranty.

In this country provision is made for such a case by section 235 of the Contract Act, under which "a person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so doing." The first question, then, to be asked is, whose agent did the defendant represent herself to be? and for this purpose we will for the moment assume that there was a representation. A person can only be the agent of another person, and the only possible representation, if the case be treated as coming within the express words of section 235, would be that the defendant represented that she was the agent of her infant son. But there is no question that the plaintiff knew the son was an infant, so that he must have been aware that any representation that the defendant was her infant son's duly authorized agent was incorrect, for an infant cannot appoint

(1) (1872) L. R. 7 Ch. 777; 7 H. L., 102. (2) (1857) 7 E. & B., 301.
(3) (1886) 18 Q. B. D., 54.

1899.

SHET MANIBHAI v. BAI RUPALIBA.

an agent, and consequently no warranty such as would support a suit could arise out of such a representation—*Beattie* v. *Ebury*[1]. Then it has been argued that the representation really was that she had power to bind the estate, so that we will pass to consider whether looked at from this point of view the plaintiff's case is bettered. In our opinion it is not. If the case be so regarded, we have to seek a solution elsewhere than in the words of section 235, and the Advocate General in effect has argued that he relies on the principle on which section 235 is based and of which, he claims, it is only a particular illustration. But still it seems to us that by this way the plaintiff gets no further; for even if it be conceded that there was a representation as to her power to bind the estate, it was one on a point of law, and thus on the authority of the case we have named incapable of supporting a suit. We have so far assumed a representation, but we have little doubt that in truth the plaintiff never relied on any representation at all, but was content to take the risk on the facts which were within his knowledge. We, therefore, think the appeal must be dismissed with costs.

Appeal dismissed.

[1] (1872) L. R., 7 Ch., 777; L. R., 7 H. L., 102.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899. *September* 11.

KAZI HASSAN AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* SAGUN BALKRISHNA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS. *

Mahomedan law—Wakf—Mutawalli—Alienation of wakf property—Suit to set aside such alienation—Right to sue—Civil Procedure Code (Act XIV of 1882), Sec. 539.

Plaintiffs sued to recover possession of certain lands, alleging that they had been granted in wakf to their ancestor and his lineal descendants to defray the expenses for, or connected with, the services of a certain mosque; that their father (defendant No. 3) and cousins (defendants Nos. 4 and 5), who were mutawallis in charge of the said property, had illegally alienated some of these lands, and had also ceased to render any service to the mosque, whereupon they

* Second Appeal, No. 22 of 1899.