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had been called as a witness the Court would or would not have held him justified in refusing to answer on the ground of privilege. Blackburn, J., said:

Those things which an attorney learns from his client, or in consequence of his employment by his client, he is forbidden to disclose, and any betrayal of his confidence would be visited by the Court as gross misconduct. But if he learns matters relating to his client under such circumstances that if questioned about them in a Court of Justice he could not refuse to answer them, he is not within our jurisdiction. It may be very bad of him, both as a man and a gentleman, to have acted thus, but it does not affect him as an attorney. We do not sit to punish personal, but professional misconduct.

This is a sound and clear rule, and we cite it here not because we intend to decide this case by reference to it, but because (subject to any contrary decision by which we may be bound) the rule enunciated is one which we propose to follow in future.

It must, however, be borne in mind that though this is the rule by which, in our opinion, the Court should be guided in cases of this class, it serves only to indicate the extreme low-water mark of professional conduct. It will, we trust, not be taken by the pleaders of this Presidency as the standard by which to regulate their professional behaviour. Bhavanishankar has himself to thank for the position in which he is in these proceedings, for he has shown neither the candour nor nicety of behaviour one could wish. That, however, is not a ground for punishment or reprimand, or for anything more than the expression of a regret that he should have acted in the way he did.

APPELLATE CIVIL.

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

1902. *January* 21.

NARMADABAI (ORIGINAL PLAINTIFF), APPLICANT, *v.* BHAVANI-SHANKAR (ORIGINAL DEFENDANT), OPPONENT.*

Limitation Act (XV of 1877), schedule II, articles 48, 49 and 145—Deposit—Suit to recover property deposited for safe custody.

In October, 1897, the plaintiff's mother deposited ornaments, clothes and money with the defendant for safe custody. In April, 1898, she demanded

* Application No. 187 of 1901 under Extraordinary Jurisdiction.

their return, but it was refused. Shortly afterwards she died. More than three years after the demand and refusal, the plaintiff (a minor) sued the defendant to recover the property, and prayed for its value as an alternative. The Judge held the claim barred under articles 48 and 49, schedule II of the Limitation Act (XV of 1877).

Held, (reversing the decree) that the suit fell within article 145 of schedule II of the Limitation Act (XV of 1877) and was not barred by limitation.

APPLICATION under the extraordinary jurisdiction of the High Court (section 25 of the Provincial Small Cause Courts Act, IX of 1887) against the decision of Ráo Bahádur Lalshankàr Umiashankar, Judge of the Court of Small Causes at Ahmedabad.

The plaintiff sued for the recovery of property alleged to have been deposited with the defendant for safe custody.

The defendant was the uncle (mother's brother) of the plaintiff, who was a minor. The plaintiff alleged that her mother Mahalaxmi, in October, 1897, had deposited ornaments of the value of Rs. 125, and cash and clothes of the total value of Rs. 52, with the defendant for safe custody; that in April, 1898, Mahalaxmi had demanded them back again, but the defendant had not returned them; and that shortly afterwards Mahalaxmi died.

On the 4th June, 1901, the plaintiff brought this suit, by her father Shivlal Gangashankar, as next friend, to recover the said property, or in the alternative an equivalent sum of money.

The defendant denied the deposit and pleaded limitation.

The Judge found that the defendant had possession of the ornaments worth Rs. 125, but he dismissed the suit as barred by limitation under articles 48 and 49, schedule II of the Limitation Act, the cause of action having accrued during the lifetime of the plaintiff's mother on the date of the demand in April, 1898.

The plaintiff applied to the High Court under its extraordinary jurisdiction, contending that the suit fell within article 145 of schedule II of the Limitation Act, and was not barred. A rule *nisi* was granted, calling on the defendant to show cause why the decree passed by the Judge should not be set aside.

Lallubhai A. Shah for the applicant (plaintiff) in support of the rule.

Ganpat S. Rav for the opponent showed cause.

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JENKINS, C.J.:—In October, 1897, the plaintiff's mother, Bai Mahalaxmi, deposited ornaments, clothes and money with her brother, the defendant, for safe custody. In April, 1898, she demanded their return, but it was refused. Shortly afterwards she died. More than three years after this demand and refusal, the plaintiff, a minor, commenced this suit by her father as her next friend, and she hereby seeks to recover ornaments of the value of Rs. 125 and Rs. 52 cash and the price of clothes, or, in the alternative, an equivalent sum of money. It is clear that the plaintiff sought to recover the ornaments and prayed for their value only as an alternative.

The Small Cause Court Judge has held the claim barred by reason of articles 48 and 49 in the schedule to the Limitation Act (XV of 1877). The plaintiff has now applied to us under section 25 of the Provincial Small Cause Courts Act, 1887, so far as her claims to the ornaments are concerned.

It may be that the plaintiff might have brought in respect of the ornaments a suit of the class indicated in articles 48 and 49, and to such a suit the bar of limitation would be a complete answer. But if a suit of another description is open to the plaintiff and she has in fact made use thereof, the bar imposed by those articles would not apply; for the case to that extent would be governed by the particular article relating to it.

Now, article 145 provides that a suit against a depository to recover moveable property deposited is to be commenced within thirty years from the date of the deposit. If this article governs, then the suit is not barred. But why should not this be the governing article so far as the plaintiff seeks to recover the ornaments? On the Small Cause Court Judge's finding the suit precisely falls within the description of that article, and "if there be two articles which may cover the case, the one, however, more general and the other more particular or specific, as a principle of construction the more particular and specific article ought to be regarded as the one governing the case": *Sharoop Dass* v. *Joggessur*.[1]

It is argued that as there was a demand and refusal, article 145 ceased to be applicable. But it is a general principle that if a man be entrusted with property for safe custody, he cannot better his position by wrongfully dealing with it.

(1) (1899) 26 Cal. 564 at p. 567.

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In our opinion, therefore, article 145 applies so far as the plaintiff seeks to recover the deposited ornaments, and the rule should therefore be made absolute with costs. Costs of the lower Court to be in proportion.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Fulton and Mr. Justice Crowe.

1902. *January* 24.

DALIBAI (ORIGINAL DEFENDANT NO. 2), APPELLANT, *v.* GOPIBAI AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 1), RESPONDENTS.*

Hindu Law—Guardian—Minor—Mortgage by guardian of minor's property—Duty of mortgagee to inquire as to necessity for loan.

Where the guardian of a minor Hindu purports to mortgage the minor's property on behalf of his ward, the lender is bound to ascertain whether the guardian is acting for the benefit of the minor. It is only, however, when there has been at the time of the loan due inquiry as to the necessity for it, that the lender can obtain a charge over the minor's property.

SECOND appeal from the decision of Dayaram Gidumal, District Judge of Dhulia, confirming the decree passed by Ráo Bahádur K. B. Marathe, First Class Subordinate Judge at Dhulia.

Suit by the plaintiff as mortgagee to recover a debt due on a mortgage, and for foreclosure and sale of the mortgaged property.

The first defendant, Punamchand, and one Jitmal (father of Dalibai, defendant 2) were brothers. They became separate in 1875-76. Jitmal died in 1883, leaving a widow and a daughter, Dalibai (defendant 2), an infant of three years old.

Jitmal's widow died about six months after her husband, and by her will, dated the 8th July, 1883, she devised all her husband's property, including the property now in question, to Punamchand (defendant 1).

Dalibai (defendant 2) was subsequently brought up and maintained by her uncle Punamchand (defendant 1).

On the 17th June, 1893, Punamchand mortgaged for his own

* Second Appeal No. 335 of 1901.