FULL BENCH.

APPELLATE CIVIL.

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

ANNAPAGAUDA TAMMANGAUDA (ORIGINAL PLAINTIFF), APPELLANT, *v.* SANGADIGYAPA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.* GOKUL DALSARAM (ORIGINAL PLAINTIFF), APPLICANT, *v.* KERU VALAD BHIKAJI (ORIGINAL DEFENDANT), OPPONENT. †

1901. *October* 17.

Limitation Act (XV of 1877), sections 19 and 20—Guardians and Wards Act (VIII of 1890)—Minor—Guardian—Debt—Part-payment—Acknowledgment of liability—Extension of time.

A guardian appointed under the Guardians and Wards Act (VIII of 1890) can sign an acknowledgment of liability in respect of, or pay part of the principal of, a debt, so as to extend the period of limitation against his ward in accordance with sections 19 and 20 of the Limitation Act (XV of 1877), provided it be shown in each case that the guardian's act was for the protection or benefit of the ward's property.

(1) SECOND appeal against the decision of F. C. O. Beaman, District Judge of Belgaum.

(2) Application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Bahádur C. D. Kavishvar, First Class Subordinate Judge of Násik, in a Small Cause Court suit.

These two cases were heard together as the same question was raised in both, viz., as to the power of a guardian of a minor by giving an acknowledgment of liability, or by paying part, of a debt for which the minor's property is liable, to extend the period of limitation within sections 19 and 20 of the Limitation Act (XV of 1877).

In the first case (*Annapagauda* v. *Sangadigyapa*, Second Appeal No. 115 of 1901) the facts were as follows:

The minor defendants were the sons of one Shivappa Nagond, who in his lifetime (on the 6th July, 1892) executed to the plaintiff a bond for Rs. 1,000. After his death the District Court appointed

* Second Appeal No. 115 of 1901.

† Application No. 119 of 1901 under the Extraordinary Jurisdiction.

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the Nazir of the Court to be guardian of the minor defendants. He on their behalf paid part of the debt and made an endorsement of the payment on the deed.

Relying on this acknowledgment the plaintiff in 1898 brought this suit to recover Rs. 1,895 due on the bond.

The minor defendants, represented by their guardian, denied the execution of the bond.

The Subordinate Judge found that the bond was proved, but rejected the claim, holding on the authority of the ruling of the Bombay High Court in *Maharana Shri Ranmalsingji* v. *Vadilal Vakhatchand*[1] that the Nazir was not a duly authorized agent of the minor defendants to make a valid acknowledgment under section 19 of the Limitation Act, and that the claim was therefore time-barred.

On appeal by the plaintiff, the Judge, though of the same opinion as that of the Subordinate Judge, confirmed the decree.

The plaintiff thereupon preferred a second appeal.

The facts in the application No. 119 of 1901 (*Gokul* v. *Keru*) were as follows:

The plaintiff had dealings with the minor defendant's father from the year 1890. The dealings continued till 1894, when a balance of Rs. 261-12-0 was found due to the plaintiff. The defendant's father having died just about that time, his mother continued the transactions with the plaintiff, and in 1895 she on behalf of the minor passed a *khata* (acknowledgment of debt) for the balance of Rs. 261-12-0. Thenceforth she paid as well as borrowed moneys on the account, acknowledging the balance at the end of each year. The last *khata* was executed by her on the 2nd October, 1898.

In the year 1901 the plaintiff brought this suit against the minor defendant, represented by his mother and guardian, to recover Rs. 297 due under the last *khata*. The suit was brought in the Court of the First Class Subordinate Judge of Násik in his Small Cause jurisdiction.

The Subordinate Judge dismissed the suit on the ground that the mother had no power to acknowledge a debt on behalf of her minor son, and that the claim was barred by limitation.

(1) (1894) 20 Bom. 61.

The plaintiff thereupon applied to the High Court under its Extraordinary Jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882), contending *inter alia* that the Judge was in error in holding that the minor defendant's guardian mother had no right to acknowledge the debt. A *rule nisi* was issued calling upon the opponent (defendant) to show cause why the order of the Judge should not be set aside.

The above two cases were heard together by a Division Bench composed of *Jenkins, C.J.*, and *Chandavarkar, J.*, who referred the question to a Full Bench. The following was the referring judgment:

CHANDAVARKAR, J.:—The question which arises in this second appeal and the civil application, both of which have been heard together, is—Can the guardian of a minor appointed under the Guardian and Ward's Act acknowledge or pay part of the principal of a debt for which the minor's property is liable, so as to extend the period of limitation against the minor within the meaning of section 19 and section 20 of the Limitation Act, respectively?

Though there is no decision of this Court covering the question as to the effect of a part-payment by the guardian of a minor on the point of limitation under section 20 of the Act, the principle of the ruling in *Maharana Shri Ranmalsingji* v. *Vadilal Vakhatchand*[1] with reference to an acknowledgment made by such guardian under section 19 of the Act must apply to a part-payment also, because the party contemplated by both the sections has to be either the person liable for the debt or his agent "duly authorized in this behalf." This is the decision of a Division Bench of this Court and is binding upon us, but having regard to the conflicting decisions, some of which have been noticed in *Maharana Shri Ranmalsingji* v. *Vadilal Vakhatchand* and the case of *Chinnery* v. *Evans*,[2] we decide to refer the question to a Full Bench.

The reference was argued before the Full Bench consisting of *Jenkins, C.J.*, *Fulton, Crowe* and *Chandavarkar, JJ.*

Balaji A. Bhagvat for the appellant (plaintiff) in the first of the above cases (Second Appeal No. 115 of 1901):—The question is whether a part-payment made by a guardian appointed under

(1) (1894) 20 Bom. 61. (2) (1864) 11 H. L. C. 115.

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the Guardians and Wards Act (VIII of 1890) in respect of the debt of the father of the minor will extend limitation under section 20 of the Limitation Act (XV of 1877). The position of a guardian appointed under the Guardians and Wards Act is analogous to that of a manager of a Hindu family. The mode of their appointment makes no difference in their powers to act for the minor. Under section 27 of the Guardians and Wards Act the powers of the guardian are very wide, and part-payment of a debt due by the minor's father comes within them. *Kailasa Padiachi* v. *Ponnukannu*(1) lays down that payment by a guardian will extend the time of limitation. An acknowledgment by a manager binds the minor: *Bhasker Tatya Shet* v. *Vijalal Nathu*.(2) The inclination of the Privy Council seems to be in favour of the recognition of such power in the guardian: *Beti Maharani* v. *The Collector of Etawah*.(3) The ruling in *Maharana Shri Ranmalsinqji* v. *Vadilal Vakhatchand*(4) is not, we submit, against us. Payment of father's debt is a case of necessity, and the guardian can bind the minor by his contracts entered into to meet such necessity: *Murari* v. *Tayana*.(5) Therefore, the guardian, though appointed by the Court, is for the purposes of part-payment the minor's "agent duly authorized in this behalf" under section 20 of the Limitation Act. With respect to the power of a person appointed receiver by Court to make a part-payment so as to save limitation, see *Chinnery* v. *Evans*,(6) and as to the effect of part-payment, see *In re Hale, Lilley* v. *Foad*.(7)

Ratanji R. Desai for the applicant (plaintiff) in the second case (*Gokul* v. *Keru*):—Our case is different from that of the appellant in the last case. In our case the guardian is the natural guardian under Hindu law, and there is an acknowledgment of the debt due by the minor's father by the guardian under section 19 of the Limitation Act. The words of the section are "an agent duly authorized." They mean authorized by law. The powers of a natural guardian are larger than those of a certificated guardian: *Chhato Ram* v. *Bilto Ali*.(8) If a certificated guardian is an agent within the meaning of section 19 of the Limitation

(1) (1894) 18 Mad. 456.
(2) (1892) 17 Bom. 512.
(3) (1894) 17 All. 198.
(4) (1894) 20 Bom. 61, 70.
(5) (1895) 20 Bom. 286.
(6) (1864) 11 H. L. C. 115, 133.
(7) (1899) 2 Ch. 107.
(8) (1898) 26 Cal. 51, 52.

Act, *a fortiori* a natural guardian is such an agent. There is no distinction in principle between part-payment by a guardian under section 20 and an acknowledgment by a guardian under section 19 of the Act. The words used are the same in both the sections. So if part-payment by a guardian is held to save limitation, an acknowledgment by him should also be held to save it. The decision in *Lewin* v. *Wilson*[1] turns upon the construction of English statutes and there are material differences between them and the Limitation Act. The test in each case, whether under section 19 or section 20, is "whether the act as between the guardian and the minor is for the benefit of the minor." If it is so, then only it is binding and not otherwise. In *Beti Maharani* v. *The Collector of Etawah*[2] the Privy Council were inclined to hold that a clear acknowledgment by a guardian would be binding on the minor. This was followed in *Sardar Bachittar Singh* v. *Jagan Nath*[3]; see also *Norendra Nath Pahari* v. *Bhupendra Narain Roy*.[4]

H. C. Coyaji for the respondent (defendant) in the first case and for the opponent in the second:—The answer to the question referred to the Full Bench depends upon the construction of sections 19 and 20 of the Limitation Act. Section 19 requires that the acknowledgment in writing shall be "signed by the party against whom such property or right is claimed," and explanation 2 defines "signed" as meaning "signed either personally or by an agent duly authorized in this behalf." The question then is whether a guardian can be regarded either (1) as "the party against whom such property or right is claimed" or (2) as "an agent duly authorized in this behalf." In order to bring the case within section 20, the creditor is bound to show that part-payment of the principal debt was made either (1) "by the debtor" or (2) "by his agent duly authorized in this behalf." We submit that a guardian is not "the party against whom property or right is claimed" within the meaning of section 20. The guardian merely represents the estate of the minor. His appointment as guardian does not make him a debtor or a person liable in respect of debts due by the estate. He is

(1) (1886) 11 A. C. 639, 644.
(2) (1894) 17 All. 198, 208.
(3) (1897) 32 Punj. Rec. No. 1.
(4) (1895) 23 Cal. 374, 378.

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not an "agent duly authorized in this behalf." An infant is incapable of appointing an agent: Simpson on Infants, p. 10; Indian Contract Act (IX of 1872), sections 182, 183. It has been urged that such powers in a guardian are likely to prove beneficial to the interests of the ward by avoiding an immediate pressure upon the estate. It may be so, but neither convenience nor emergency can create an agency where none has been or could in law be created.

The case of a manager of a joint Hindu family can be differentiated on the ground that the manager is a joint-debtor, while a guardian is not. The Calcutta High Court has declined to recognize such powers in a guardian: *Azuddin Hossein* v. *Lloyd*,(1) *Wajibun* v. *Kadir Buksh*,(2) *Chhato Ram* v. *Bilto Ali*.(3) This view was approved of by our High Court in *Maharana Shri Ranmalsingji* v. *Vadilal Vakhatchand*,(4) and apparently the same view was adopted in Second Appeal No. 659 of 1898.

Bhagvat, in reply:—The guardian is not a debtor personally, but the estate which he represents is so. If the manager is to be considered only as a joint-debtor with the minor members, then he has no power to extend time at all (section 22 of the Limitation Act), and yet according to *Bhasker Tatya Shet* v. *Vijalal Nathu*(5) a manager can pass a legal acknowledgment The cases of the Calcutta High Court are not binding here. Besides, it does not appear from the reports that the attention of the Judges was drawn to the points now urged.

JENKINS, C.J.:—The question referred for our opinion is this: "Can the guardian of a minor appointed under the Guardian and Ward's Act, 1890, acknowledge or pay part of the principal of a debt for which the minor's property is liable, so as to extend the period of limitation against the minor within the meaning of section 19 and section 20 of the Limitation Act, respectively?"

I will deal with the part-payment of principal first. This turns directly on section 20 of the Limitation Act which is in these terms:

When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf;

(1) (1883) 13 Cal. L. R. 112.
(2) (1886) 13 Cal. 292.
(3) (1898) 26 Cal. 51.
(4) (1894) 20 Bom. 61, 64.
(5) (1892) 17 Bom. 512.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf;

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

The guardian is not a person liable to pay the debt within the meaning of the section, and this, I think, is made clear by the use of the word "debtor" in the latter part of the section.

Can, then, a guardian for the purposes of a part-payment be his ward's "agent duly authorized in this behalf"?

First, then, as to his being his ward's agent. It is argued that he cannot be so described, because a minor cannot under the Contract Act employ an agent. But this is not conclusive, as one can for certain purposes be the agent of another in the absence of contract. This was the view of Lord Westbury in the case of *Chinnery* v. *Evans*.[1] The Lord Chancellor there said:

> The next point raised in argument was this: whether payment made by the receiver appointed under the statute can be considered as payment made by the person liable to pay, or his agent, upon the hypothesis that those words in the 40th section of 3 and 4 Will. 4, c. 27, namely, the words 'by the person by whom the same shall be payable, or his agent,' apply to both cases, that is to say, to the case of payments of interest as well as the case of acknowledgments, which I think they certainly do.
>
> Upon that point I think no reasonable doubt can be entertained, that under the statute the receiver in the receipt of the rents of the Limerick estate is, in point of fact as well as of law, the receiver of the mortgagor, the owner of the estate subject to the mortgage, and that any payment made by the receiver in pursuance of the order is payment in law by the legal agent of the person liable to pay. I have no doubt, therefore, and I submit to your Lordships, that no reasonable doubt can be entertained as to the mortgagee's security affecting all the lands originally comprised in it, in those three separate counties of Cork, Kerry and Limerick.

Now the receiver in that case had not been appointed by the mortgagor, so that the relation of principal and agent subsisting

(1) (1864) 11 H. L. C. 115.

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between them was not contractual. The receiver had been appointed by the Court on the adverse application of the mortgagee, and yet he was, for the purposes of the Limitation Act then under consideration, treated by the Lord Chancellor as the mortgagor's agent. It is, no doubt, said in *Lewin* v. *Wilson*(1) that this was not involved in the actual *ratio decidendi* in *Chinnery* v. *Evans*; but I do not think it was thereby intended to express dissent from Lord Westbury's view, as the comment was clearly directed to another purpose. The limits and effect of Lord Westbury's judgment on this point are thus described by Sir George Jessel in *Cockburn* v. *Edwards*.(2) "The case of *Chinnery* v. *Evans* shows that the *dictum* is wrong. The case there arose under the Statute of Limitations, 3 and 4 Will. 4, c. 27, and the first question to be decided was whether a payment, in order to take a case out of the statute, must be made by the party chargeable, or his agent, and it was held that it must. Then arose the question whether the payments in that case were so made. The payments were made by a receiver, who, no doubt, had been appointed at the instance of the mortgagee, and the question was whether such payments were made by, or on behalf of, the mortgagor. The whole contest was whose agent the receiver must be treated as being, and it was held that he must be treated as the agent of the mortgagor. Lord Westbury says(3): 'The next point raised in argument was this: whether payment made by the receiver appointed under the statute can be considered as payment made by the person liable to pay or his agent. . . . Upon that point I think no reasonable doubt can be entertained, that under the statute the receiver in the receipt of the rents of the Limerick estate is, in point of fact as well as of law, the receiver of the mortgagor, the owner of the estate subject to the mortgage, and that any payment made by the receiver in pursuance of the order is payment in law by the legal agent of the person liable to pay.' Lord Cranworth says(4): 'The payments in this case were not payments by a stranger, for though a receiver appointed under the Irish Statute, 11 and 12 Geo. 3, c. 10, is an officer of the Court, yet he is certainly no stranger to the mortgagor, but a

(1) (1886) 11 A. C. at p. 644.
(2) (1881) 18 Ch. D. 449 p. 457.
(3) (1864) 11 H. L. C. at p. 134.
(4) (1864) 11 H. L. C. at p. 139.

person paying for him and on his account what he is bound to pay.' The payments, therefore, were payments made by an agent of the mortgagor. The decision is that payments, in order to take a case out of the statute, must be so made, and that negatives the view that receipt of rents by a mortgagee is to be treated as payment."

These authorities, in my opinion, warrant the proposition that, for the purpose of payment under the Limitation Act, an agent need not derive his authority from contract. There are cases where the contrary view has been held. Thus in *Maharana Shri Ranmalsingji* v. *Vadilal*[1] it was said that the guardian was not the agent of her ward. And the same opinion was expressed in *Chhato* v. *Bilto*.[2] Other cases to the same effect might be cited. In all, however, it was assumed that the agency must be contractual; in none was reference made to Lord Westbury's view.

The decision of the Judicial Committee in *Beti Maharani* v. *The Collector of Etawah*[3] aptly illustrates the application to the Indian Limitation Act of Lord Westbury's opinion. The facts are that on the 20th June, 1876, Lala Laik Singh passed a bond for Rs. 7,000 and the plaintiff in the suit became its assignee. The bond was payable on the 1st of November, 1876, and as no payment had been made on it, the bar of limitation was pleaded, and the debt was admittedly barred, unless taken out of the statute by subsequent acknowledgment. Therefore reliance was placed upon two alleged acknowledgments given under the following circumstances. Lala Laik on his death was succeeded by his nephew Pirthi as his heir. Pirthi, however, was of unsound mind, and his wife Raj Kuar was appointed Sarbarahkar, or manager, of the estate by the Collector, but was not appointed his guardian under Act XXV of 1858. During her husband's lifetime she appointed Ajudhia and three others to be her am-mukhtars. On her husband's death she succeeded to his estate, which on her petition came under the charge of the Court of Wards (Act XIX of 1873). The alleged acknowledgment by Ajudhia was given

(1) (1894) 20 Bom. 61 at p. 74. (2) (1898) 26 Cal. 51.
(3) (1894) 17 All. 198.

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in Pirthi's lifetime, that by the Court of Wards after his death. With reference to the first their Lordships say (page 207):

"The question then is first whether Raj Kuar herself was an agent duly authorized to acknowledge Pirthi's liability, and secondly whether Ajudhia was so authorized. The office of Sarbarahkar has regard, as their Lordships understand, to the lands with which the Collector is concerned, and not to the person or to the personal property of the landholder. If so, it is difficult to see how a Sarbarahkar, not being guardian, can be authorised to admit a personal liability. The point has not been carefully inquired into, and in the absence of accurate knowledge their Lordships will only say that Raj Kuar's authority seems very doubtful."

It would be straining these words too much to spell out of them an authoritative pronouncement that the guardian of one under disability could be an agent for the purposes of the Limitation Act, but at least it is evident that such a proposition did not strike their Lordships as in any way preposterous.

In dealing with the second of the alleged acknowledgments their Lordships say (page 208):

"Their Lordships now pass to the notice given by the Court of Wards, which is as follows:

'Whereas the *riasat* of Harchandpur, tahsil Phaphund, is under the management of the Court of Wards, and it has been ascertained that money is due to you by the *raises* of Harchandpur, therefore notice is hereby given to you to attend either in person or through a Mukhtar at the Collector's office at Etawah in my Court on 17th April, 1888, at 10 A.M., together with the deeds relating to the accounts, and you will be questioned about the debt.'

"It was issued between the 12th and 17th of April, 1888. At that time Pirthi was dead and Raj Kuar was his heir. Raj Kuar was desirous of being declared disqualified and of putting her estate under the management of the Court of Wards. Her first application seems to have been made on the 10th April, and the Court must have acted immediately without waiting for formal orders, which were not issued till a later time. But it must be taken that the Court's act would bind the ward Raj Kuar and that the notice is the act of the Court. The question is whether, supposing the bond to be still alive, it acknowledges liability on that bond."

Then after discussing the operation of the notice they proceed: "In this state of facts it is impossible for the plaintiff to contend that the general words of the notice are not satisfied by reference to the mortgage bond, or that they constitute an acknowledgment of liability in respect of the property or right sued for, as is required by section 19 of the Limitation Act."

It appears to me that the Judicial Committee thought an acknowledgment by the Court of Wards would operate under section 19; it therefore becomes important to ascertain the source and extent of this authority. For this we must have recourse to the North-Western Provinces Land Revenue Act of 1873. That statute in its 6th chapter deals with the Court of Wards, and the 203rd section defines the Court's power thus:

> The Court of Wards shall have power to give such leases or farms to the whole or any parts of the property under its charge and to mortgage or sell any part of such property and to do all such other acts as it may judge to be most for the benefit of the property and the advantage of the disqualified holder.

There is nothing in the Act which could constitute the Court of Wards the person against whom the debt was claimed; therefore it is only as the agent for Raj Kuar duly authorised in that behalf that it could have signed the acknowledgment of the debt. The Court's agency was manifestly not contractual, so that we have in this case a further warrant for considering (notwithstanding the decisions to the contrary) whether a guardian can be his ward's agent for the purpose of making a payment that will attract the consequences prescribed in section 20. In my opinion he can be such an agent, if it can be said he is "duly authorized in that behalf," and he is "duly authorized in that behalf" if as between himself and his ward he has a right to make the particular payment. To determine this right we must look to the Guardians and Wards Act. It is provided by the 27th section of that Act that "a guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and subject to the provisions of this chapter he may do all acts which are reasonable and proper for the realization, protection and benefit of the property." Therefore in each case it must be seen whether the particular payment answers this description. If on the facts it appears that it does,

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then as to that payment the guardian is an agent of the minor duly authorized in that behalf, otherwise he is not.

It is no objection, I think, to this view that a guardian cannot impose a personal liability on his ward by contract; for an acknowledgment under the statute is fundamentally distinct from a fresh contract, though it may in some respects have similar results. This is made clear by the decision of their Lordships of the Privy Council in *Gopee Kishen* v. *Brindabun Chunder*,(1) where it is said: "The authorities which have been mainly relied on, in order to show that there has not been a sufficient acknowledgment within the period of limitation in the present case, were cases of actions on promises, decided on the statute of the 21st Jac. 1 and the 9th Geo. IV, c. 14. The principle of these decisions is not applicable to the case like the present. They depend not upon the effect of an exception in the statute, but upon the principles of the Common Law with respect to the cause of action. The issue joined, made it incumbent on the plaintiff to prove a promise made within six years and such as to agree with that laid in the declaration. In such cases acknowledgments, whether by words or acts, are of no avail, save so far as they sustain the promise alleged; there is no exception within which they come; and these cases are to be regarded simply as actions brought on promises made within six years. But the cases in which acknowledgments are operative by way of exception are of a different character. In these, the action must be maintained on the original security; and an acknowledgment within the prescribed period of limitation shows that the obligation was then subsisting and unsatisfied: a promise to pay is not required. It has, therefore, been decided that in an acknowledgment within the 3rd and 4th Will. IV, c. 87, section 40, it is not necessary that the amount of the debt should be specified, nor a promise made to pay it: *Carroll* v. *Darcy* (10 Ir. Eq. Rep. 329). It has also been held that an admission of a bond debt contained in the answer of the executors of the obligor, although in a suit to which the obligee was not a party, was sufficient to take the case out of the operation of 3rd and 4th Will. IV, c. 242: *Moodie* v. *Bannister* (4 Drew 432).

(1) (1869) 13 Moor. I. A. 37 at p. 54.

This brings me to the question whether a guardian's signature of an acknowledgment has any operation under section 19 of the Limitation Act. In this connection *Beti Maharani's case*[1] is of especial value: it was there evidently thought that the Court of Wards could give an acknowledgment. The provision in the Act on which that opinion was based was this—"to do all such other acts as it may judge to be most for the benefit of the party and the advantage of the disqualified holder." But that expression differs more in form than in force from the phraseology of the Guardians and Wards Act, which provides that (section 27) "a guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this chapter he may do all acts which are reasonable and proper for the realization, protection or benefit of the property." By parity of reasoning, therefore, a guardian can sign an acknowledgment for the purposes of section 19 of the Guardians and Wards Act. But though I think a guardian can sign an acknowledgment and make a payment so as to attract the consequences indicated in sections 19 and 20 of the Limitation Act, this is subject to the qualification that in each case it must be shown that the guardian complied with the conditions of section 27 of the Guardians and Wards Act, and in the application of this rule there probably will be this difference, that to bring an acknowledgment within the terms of the section more cogent proof will be required. In each case the *onus* will lie on him who relies on the payment or acknowledgment, but, provided he discharge it, I think the requirements of the Limitation Act will be satisfied. Accordingly I would, in answer to the reference, say that a guardian appointed under the Guardians and Wards Act can sign an acknowledgment of liability in respect of, or pay in part the principal of, a debt so as to extend the period of limitation against his ward in accordance with sections 19 and 20 of the Limitation Act, provided it be shown in each case that the guardian's act was for the protection or benefit of the ward's property.

FULTON, J.:—I concur in the decision of the learned Chief Justice.

(1) (1894) 17 All. 198.

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When the judgment in *Maharana Shri Ranmalsinghji* v. *Vadilal*[1] was given I was of opinion that the agent referred to in section 19 of the Limitation Act must be an agent authorised by the party to sign. The remarks of the Privy Council, however, in the subsequent decision of *Beti Maharani* v. *Collector of Etawah*[2] show that this view cannot be maintained. If an acknowledgment by the Court of Wards under Act XIX of 1873 would bind the ward for the purposes of that section, it seems impossible to hold that an acknowledgment by a guardian of the property, whether under Hindu Law or under the Guardians and Wards Act, would not have a similar effect, provided it was, in the circumstances of the case, an act reasonable and proper for the realization, protection and benefit of the property.

The case of *Chinnery* v. *Evans*[3] relates to payments made by a receiver, and, as pointed out by Lord Hobhouse in *Lewin* v. *Wilson*,[4] payment and acknowledgment are two very different things. The agency of the guardian depends on the consideration whether his act is within the scope of his authority: and his authority to discharge debts due by his ward is more obvious than his authority to acknowledge the liability of his ward when not in a position to make payment. However, circumstances may arise in which such acknowledgment would be for the benefit of the ward, and in such circumstances it must be held, having regard to the dictum in *Beti Maharani* v. *Collector of Etawah*[2] that the guardian, when signing the acknowledgment, is an agent duly authorised in this behalf.

CROWE and CHANDAVARKAR, JJ.—We concur in the remarks made by the learned Chief Justice.

(1) (1894) 20 Bom. 61.
(2) (1894) 17 All. 198.
(3) (1864) 11 H. L. C. 115.
(4) (1886) 11 App. Ca. 645.