

Before Sir Chunder Madhub Ghose, Kt. and Mr. Justice Caspersz.

KANIZ FATIMA

v.

SAJJAD HOSAIN.*

1906

Dec. 18.

*Guardian and ward—Guardian—Liability of guardian to render account—
Suit for account against guardian—Guardian a Wards Act (VIII of
1890) s. 41, cl. 4.*

Where a new guardian appointed under the Guardian and Wards Act had not inspected the accounts submitted by the previous guardian, the latter having failed to pay the process fee for service on the former of notice to inspect them, and the Court had made no order under s. 41 (4) of the Act discharging the previous guardian,

Held, that a suit for account would lie against the previous guardian.

A guardian is bound to render accounts in respect of all the properties of which he took possession as guardian under the order of the Court, and for the purpose of taking the accounts an inquiry must be made as to what those properties are.

SECOND APPEAL by the plaintiff, Kaniz Fatima.

The suit, out of which this appeal arose, was brought by the plaintiff, a minor, through her husband and guardian against the defendant Syed Sajjad Hosain for accounts.

The material allegations in the plaint were these. That the defendant, who was the paternal uncle of the plaintiff, was appointed guardian of her person and property by the District Judge on the 13th September 1900; that, on the marriage of the plaintiff, the defendant, on the 12th November 1902, resigned his office as guardian and the plaintiff's husband was appointed by the District Judge to be her guardian on the 3rd March 1903; that certain properties specified in the plaint constituted the estate of the plaintiff and remained under the management of the defendant from the 13th September 1900 to the 11th

* Appeal from Appellate Decree No. 187 of 1905, against the decree of H. Holmwood, District Judge of Patna, dated the 4th October 1904, reversing the decree of Ram Lal Dutt, Offg. Munsif of Patna, dated the 13th July 1904.

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November 1902; and that the accounts filed by the defendant in the Court of the Judge on the 10th November 1902 were incorrect and false.

The defendant pleaded that the suit was not maintainable and that some of the properties mentioned in the plaint did not belong to the plaintiff.

The Munsif held that the suit was maintainable and that the defendant was liable to render accounts. He made a preliminary decree for account, and appointed a Commissioner to enquire what were the properties which came under the management of the defendant, and to take the accounts.

On appeal by the defendant the District Judge held that the defendant having resigned his guardianship with the leave of the Court, after filing his accounts, on the 24th November 1902, and the plaintiff's husband not having inspected the accounts, and there being no allegation of fraud, the suit was not maintainable. He further held that the Munsif was wrong in directing the Commissioner to enquire into the title of the properties alleged to have been in the hands of the defendant.

He accordingly dismissed the suit.

The plaintiff appealed to the High Court.

Mr. Gauhar Ali (Maulvi Mahomed Mustafa Khan with him) for the appellant. When the defendant filed his accounts in the Court of the District Judge he was ordered to pay process fee; for service of notice on the plaintiff's husband calling upon him to inspect the accounts; the defendant did not pay the fee, no notice was issued and the plaintiff did not inspect the accounts. No order was passed by the Judge discharging the defendant from liability, and s. 41 (4) of the Guardian and Wards Act can be no bar to the suit. The defendant is liable to render accounts for the period of his guardianship, and for the purpose of taking the accounts an enquiry must be made as to what are the properties in respect of which accounts are to be rendered.

Mr. A. Chaudhuri (Maulvi Nuruddin Ahmed with him) for the respondent. The order of the Court permitting the defendant to resign and the order appointing the husband to be guardian amount to a discharge of the defendant, and there being

allegation of fraud the suit is not maintainable : s. 41 (4), Guardian and Wards Act. The question as to whether certain properties belong to the minor or to the defendant cannot be decided in a suit for account.

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GHOSE AND CASPERSZ JJ. This appeal arises out of a suit for an account against a person, who held the office of guardian appointed by the District Judge under the provisions of the Guardian and Wards Act (VIII of 1890). The plaintiff is a minor under the guardianship of her husband one Syed Liakat Hosain. It appears that, on the 12th November 1902, the defendant, the then guardian, applied to the District Judge for permission to resign his office. On the 24th idem, the Judge recorded the following order:—"Call upon the husband to take over the guardianship and, if he wishes, to inspect the guardian's accounts." The Court further directed notice to issue on the husband upon the defendant putting in the process fee. A week after this, that is to say, on the 2nd December 1902, the husband presented an application for the purpose of being appointed guardian; but it does not appear that the defendant put in any process fee for notice to issue on the husband for the purpose of inspecting the accounts. But, however that may be, an order was subsequently made on the 3rd March 1903 appointing the husband as guardian. On the 17th December 1903, the present suit was brought for the purpose of taking an account from the defendant for the period during which he held the office of guardian.

The Court of first instance held that the defendant was liable to render an account, and it accordingly passed a preliminary decree and appointed a Commissioner for the purpose of examining the accounts produced by the defendant.

We should have mentioned that, with the application presented by the defendant on the 12th November 1902, the guardian put in his accounts, and these accounts no doubt were lying in the office of the District Judge. Apparently, the guardian did not inspect them, but afterwards brought the present suit on the 17th ~~dec~~ December 1903 for the same purpose.

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On appeal, the learned District Judge has held that, regard being had to the facts which we have noticed, the suit is not maintainable.

We do not quite understand upon what ground it could be held that no suit lies for the purpose of calling upon a guardian to render accounts. No doubt, if the accounts had been inspected and found to be satisfactory, or by reason of the plaintiff not having in proper time inspected the accounts and questioned the propriety of such accounts, the District Judge had made an order declaring the guardian to be discharged from his liabilities save as regards any fraud that might be discovered, as indicated in section 41, clause (4) of the Act, the matter might have stood differently. But nothing of this kind happened in the present case; and it must be borne in mind that the defendant failed to deposit the process fee, which he was required to put in for the purpose of notice being given to the husband of the minor to come in and inspect the accounts. The accounts, no doubt, were lying in the office of the District Judge for about a year; but we are unable to say that, simply by reason of the present guardian having neglected to inspect those accounts, there is a legal bar to the present suit being maintained. What the plaintiff now proposes to do is to have the same thing done which he might have done upon notice being given to him to come in and examine the accounts filed by the defendant. The learned Judge of the Court below has, we think, not correctly applied the provisions of clause 4 of section 41 of the Guardian and Wards Act to the facts of this case. That clause runs thus:—“When he,” that is to say, the guardian, “has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.” Now in the present case, though the plaintiff did not promptly appear and inspect the accounts and challenge them, yet the District Judge did not take any notice of the matter, and necessarily did not discharge the guardian from the liability of rendering accounts in future. If he had done so, the view adopted by the District Judge might have been supported; but, in the circumstances mentioned, we do not see why the suit should not lie. The learned Judge refers

to a case decided by his predecessor, the decision in which was affirmed by the High Court, but the distinguishing feature between that case and this case is that there was an order of discharge by the District Judge and the accounts that were sued for were for a period subsequent to the order of discharge. In this view of the matter, we think that the order of the District Judge should be set aside and the case remanded to the Court of first instance for an account being taken.

There is, however, one other matter as to which we should say a few words. A question seems to have been raised between the parties as to whether certain properties in respect of which accounts are claimed by the plaintiff really belonged to the estate of the minor or belonged to the defendant personally. The Munsif directed an enquiry, amongst others, into this matter. No doubt, in the present case, the question of right between the parties as regards the properties in question cannot properly be gone into, but still for the purpose of taking an account, it must be seen what are the properties, which the defendant guardian took possession of as guardian of the minor under the orders of the Court; and there can be no doubt that he is bound to render an account in respect of all the properties of which he received charge as such guardian. In this connection we may refer to section 10, clause (c) of the Guardian and Wards Act. In the application, which is presented to the District Judge for the appointment of a guardian, the nature, situation and the approximate value of the property of the minor are set out, and, if the guardian takes over charge in accordance with the list as given in the application, it may be taken *prima facie* that he is in charge of all the properties as guardian of the minor concerned, and that he is bound to account in respect of those properties. With these remarks, the appeal is allowed, and the case sent back to the Court of first instance for an account being taken. Costs will abide the result.

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Appeal allowed.