portion of a wall is dangerous or not, is often a mere matter of opinion and I have no doubt accused in good faith believed the contractor was exceeding his instructions. Anyhow unless a Committee itself passes a precise order the extent of which cannot be doubted, it is difficult to say how an owner, honestly believing the contractor or workman to be exceeding his powers and so objecting to further work, can be found guilty of an offence. I allow the revision and set aside both conviction and sentence.

R.M./R.K. *Revision allowed.*

A. I. R. 1914 Lahore 130

JOHNSTONE AND RATTIGAN, JJ.

Amir and *others*—Plaintiffs — Appellants.

v.

Faqira and *others*—Defendants—Respondents.

First Appeal No. 1178 of 1912, Decided on 11th May 1914, from decree of Dist. Judge, Attock, D/- 20th April 1912.

(a) Civil P. C. (5 of 1908), O. 23, R. 3—Signature of party to compromise is unnecessary if compromise is not objected and benefit under it derived.

A person who is a party to a suit and who is present in Court at the time of compromising it but does not object to its terms, is bound by the compromise although he has not actually signed it, and particularly where he also gets some benefit thereunder. [P 130 C 1]

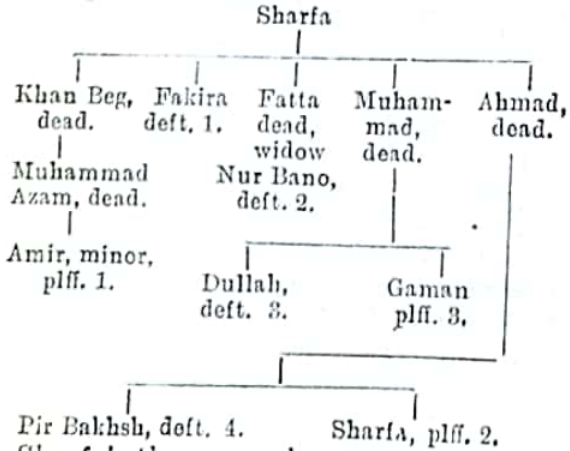
(b) Civil P. C. (5 of 1908), O. 32, R. 7—Compromise by guardian with permission of Court is binding and cannot be repudiated.

A minor on attaining majority is incompetent to repudiate a compromise made by his next friend or guardian in a suit, if it was made for his benefit and with the sanction of the Court. [P 130 C 2]

Muhammad Iqbal—for Appellants.

Nand Lal—for Respondents.

Judgment.—A few words added to the following pedigree-table will suffice to explain this case :



Sharfa's three sons by one wife were Fatta, Fakira and Khan Beg; his sons by the other wife were Muhammad and Ahmad. The family separated, and after the death of Sharfa and Khan Beg we find Fatta, Fakira and Mahammad Azam jointly owning in equal shares 3,049 kanals 14 marlas of land. Fatta died and his widow took his place, and then they partitioned their joint holding, Muhammad Azam taking 1,088 kanals 12 marlas; Fakira 1,226 kanals 4 marlas and Mt. Nur Bano 1,095 kanals 1 marla. This was in 1903. In 1910 Dulla, Pir Bakhsh and Sharfa (son of Ahmad), and by later impleading, Gaman sued for an avoidance of that partition on the ground of fraud and what not. This suit was compromised (p. 16, paper-book) thus:

(i) Fakira and Mt. Nur Bano at once surrendered 100 kanals to Dullah and Gaman, and 60 kanals to Pir Bakhsh and Sharfa.

(ii) After the death of Mt. Nur Bano, Nakira and Amir minor, shall take her remaining estate in equal half shares.

Amir and Sharfa being minors, Pir Bakhsh and Fakira applied for sanction to compromise, see p. 20; received sanction, p. 21; put in the compromise and had it duly verified and passed, p. 18.

The present suit is brought by Amir minor, Sharfa, minor, and Gaman for a declaration that the property is still the joint property of plaintiff Amir and of defendants 1 and 2, Fakira and Mt. Nur Bano, the compromise being inoperative against the rights of the three plaintiffs. The Court below held that Amir, plaintiff, was bound by the compromise because it was in his favour, inasmuch as instead of taking (as he would do by ancestral shares) one-fourth of Fatta's estate on the death of Mt. Nur Bano, he was to get half of that estate diminished by the small areas given to Dullah, Gaman, Pir Bakhsh and Sharfa; that Sharfa, minor, was bound "for the same reasons as have been given regarding Amir," that Gaman was bound because he was present at the compromise and was duly represented, he being blind, by Dullah, his attorney. On these findings the suit was dismissed with costs.

All three plaintiffs have appealed against this decision, but Mr. Iqbal who represents them has wisely given up the claim qua Amir. He concedes that the compromise is clearly very beneficial to

Amir and therefore, finds himself unable to contend that the compromise should be upset at the instance of Amir. There remain the claims that it should be set aside on the suit of (a) Gaman, (b) Sharfa.

Now we are unable to find any force in either claim. Respondents assert that Gaman was present at the compromise, and the order of the District Judge dated 23rd November 1910 in the compromised case, see p. 18, paperbook—though it does not specifically mention Gaman—goes to show that this assertion is in accordance with facts. Mr. Iqbal, when asked by us, is unable to assert that Gaman was not present; and in these circumstances we must hold that he was present. This being so, and there being also the circumstantial evidence pointed out by the lower Court that Gaman had actually given a power-of-attorney to Dullah, it is idle for appellants to attempt to deny that the compromise was entered into with the full occurrence of Gaman. It is noteworthy also that it is more than doubtful whether Gaman, who under the compromise took at once along with Dullah 100 kanals of the land then in suit, was really entitled, by law or custom, to any share whatever in Fatta's estate. We have no hesitation therefore in holding that Gaman cannot now object to the compromise.

As regards Sharfa, he, no doubt, was a minor; but the Court expressly sanctioned the compromise, as we have seen, and gave the opinion that the "compromise shall be beneficial" to him and the others. In his case also, as in the case of Gaman, it is doubtful whether he was by law or custom entitled to anything out of Fatta's estate, and yet, he along with Pir Bakhsh, was to get and did get 60 kanals out of it.

These observations are sufficient to dispose of the case and we agree with the District Judge in his final conclusions against the plaintiffs, but we must point out two errors into which the learned District Judge has fallen. Clearly, though Sharfa's claim must fail, it does not fail on the same grounds as apply to the case of Amir; and, again, at p. 31, lines 28 *et seq.*, of the paper book the District Judge is hardly right in quoting, in justification of the somewhat arbitrary shares allotted by the compromise of 1910, the reasons given by the Tahsildar in connexion with the district earlier arrangement of 1903, for the differences of areas observable in that arrangement.

We dismiss the appeal with costs against Sharfa and Gaman.

R.M./R.K. *Appeal dismissed.*

A. I. R. 1914 Lahore 131

KENSINGTON, OFFG. C. J. AND RATTIGAN, J.

Murli Dhar—Defendant—Appellant.

v.

Gobind Ram—Plaintiff—Respondent.

Second Appeal No. 455 of 1912, Decided on 31st July 1913, from decree of Divl. Judge, Multan, D/- 7th March 1912.

(a) Compromise — Consideration — Withdrawal of arbitration proceedings held good consideration.

The withdrawal of proceedings instituted under S. 523, Civil P. C., 1882, constitutes sufficient consideration for a deed of compromise filed by the parties. [P 132 C 2]

(b) Registration Act (16 of 1908), Ss. 17 (2) (6) and 49—Compromise incorporated into order of Court and relating to property in suit requires no registration and is admissible in evidence — Inclusion of condition to execute separate deeds does not make it registrable.

A deed of compromise, which is in the nature of a petition addressed to the Court and has been incorporated into the order of the Court and the record of the suit and relates to the property in suit, is not compulsorily registrable and is admissible in evidence without registration : 27 *P. R.* 1906, *Foll.* [P 132 C 1, 2]

Such a deed is not rendered compulsorily registrable merely because it contains a provision whereby the parties undertake to execute a deed to assure each other in the properties respectively surrendered to them. [P 133 C 1]

Sheo Narain—for Appellant.

Pestonji Dadabhai and *Manohar Lal* for *Sukh Dial* and *Roshan Lal*—for Respondent.

Judgment.—Plaintiff and defendant are father and son, and the present suit relates to a long-standing dispute between them as to the partition of the family property inter se. They originally agreed to refer the dispute to arbitration, but as there was some difficulty in getting the matter settled, the plaintiff applied under S. 523, Civil P. C., 1882, to have the agreement filed in Court. Thereafter, he and his son (it is said at the instance of friends) came to terms, and executed a written deed of compromise whereby they agreed to divide the various properties therein specified between themselves, the said properties being expressly allotted to