Regulation. The Deputy Commissioner accepted the suggestion by order dated the 18th August, and authorised the Sub-Divisional Magistrate to make the reference and nominate the members. The reference was accordingly made and after enquiry and trial *jirga* reported against all accused persons. The Deputy Commissioner considered the report and by his order, dated 21st October, acquitted Juman Ram and convicted Bhola Ram under S. 497 and sentenced him to three years' rigorous imprisonment and to pay a fine of Rs. 100. He also convicted *Must.* Zainab under S. 30 of the Regulation and sentenced her to rigorous imprisonment for one year.

Bhola Ram, through his Pleader Mr. Govind Das, has applied for revision of the Deputy Commissioner's order on the following three grounds :—

(*a*) Regulation III of 1901 was no longer in force in the Leiah Tahsil, which now forms part of the Muzaffargarh District.

(*b*) The said Regulation does not apply to Hindus, but only to Biloches and Pathans.

(*c*) The Leiah Tahsil having never been severed for the purposes of the said Regulation from the Dera Ismail Khan District to which it belonged at the time of coming in force of the Regulation, the only Deputy Commissioner who had jurisdiction to hear the case was the Deputy Commissioner of Dera Ismail Khan.

Game Shah v. *Emperor* (1) is sufficient authority to justify my entertaining this petition, and it is also authority for overruling ground (*a*) as above set forth. It is a Division Bench ruling and as such binding on me.

As regards the *second* objection, Mr. Petman has referred me to Punjab Government Notifications Nos. 720-A, dated the 9th of July, 1887, and 1156, dated the 15th of November, 1887, both issued under the provisions of the Frontier Crimes Regulation of 1887. By the first of these notifications, the provisions of the Regulation of 1887 were (with certain irrelevant exceptions) extended to the Bannu, Dera Ismail Khan and Dera Ghazi Khan Districts, and by the second, the provisions of the Regulation as a whole were extended to all persons, not being European British subjects, born or ordinarily residents in those districts. Regulation IV of 1887 has been repealed by Regulation III of 1901, and though no new notification has been issued under S. 1 (4) of latter Regulation, the notifications issued under Regulation IV of 1887 must be deemed to be still in force by virtue of S. 24 of the General Clauses Act, 1897. Mr. Govind Das very properly admitted that his second objection failed and could not be supported.

The *third* objection, like the first, is covered by the decision of the Division Bench in *Game Shah* v. *Emperor* (1).

I appreciate the force of Mr. Govind Das's argument that if the Regulation be held to be still in force in the Leiah Tahsil, as if it had never been severed from the Dera Ismail Khan District, the logical inference is the Deputy Commissioner of that district and not the Deputy Commissioner of Muzaffargarh District had jurisdiction to refer this case to the *jirga*. This contention is, however, opposed to the ruling cited and I must, therefore, overrule it.

The result is that the petition fails and is rejected.

R.M /R.K.

Revision rejected.

(1) (1903) 8 P. R. 1903 Cr.

A. I. R. 1915 Lahore 356

JOHNSTONE C. J. AND RATTIGAN, J.

Sultan Singh—Plaintiff—Appellant.

v.

Hashmat Ullah and *others*—Defendants—Respondents.

Second Appeal No. 1085 of 1913, decided on 14th June, 1915, from the Decree of Divnl. Judge, Delhi, dated 20th February, 1913.

(a) Guardian and Wards Act (8 of 1890), Ss. 29 and 31—Sanction under Ss. 29 and 31 given—Still Court can stop sale if detrimental to award.

The Legislature did not intend that a Court should give permission to a guardian to sell the ward's property without fixing at least an approximate price and without clearly ascertaining what is to be sold and the value of it.

Even if a Court has given sanction under Ss. 29 and 31 (1) it is not beyond the power of that Court to intervene and stop the sale, if it finds something detrimental to the ward's interest is contemplated. [P. 357, C. 2 & P. 358, C. 1.]

(b) Specific Relief Act (1 of 1877), Ss 38 and 41—Ward suing to undo transaction entered by

guardian must restore benefits received only if other party acts in good faith.

If a plaintiff sues to undo a transaction entered into by his guardian in his name during his minority, then *if the other party has acted in good faith and the plaintiff or his estate has actually received benefit*, the plaintiff must, as a condition precedent to the undoing of the said transaction, restore the said benefit. If, however, the minor or *quondam* minor is the *beatus possidens* and is being sued by the other party; a claim against the minor for refund of the benefit would fail.

[P. 358, C. 1.]

Moti Sagar and *Balwant Rai* — for Appellant.

Nanak Chand and *Muhammad Iqbal* — for Respondents.

Judgment.—Mr. Moti Sagar on behalf of plaintiff-appellant began his address by giving us a history of the affair. As the facts are stated by him with substantial correctness, though with one noteable omission, we reproduce his version here, remarking at once that in our opinion, upon a correct interpretation of the facts and a sound application of the law thereto, the plaintiff has no case.

The relationship of the defendants, who are minors, to their present and *quondam* guardians and others appears from the pedigree-table given in the judgment of the lower Court, thus:

Must. Hussaini, (now guardian *ad litem*)
|
Must. Imtiyazi Begam, (guardian under the Act)
|
defendants.

Must. Imtiyazi Begum has had two husbands *viz.*, Salim Ullah, deceased father of defendants, and Ali Hussain, their stepfather, who is still alive. The minors have property in the United Provinces as well as in Delhi, and *Must.* Imtiyazi Begam many years ago was appointed statutory guardian by the District Judge of Muradabad. Debts were outstanding against the minors, and on 3rd August, 1906 the guardian procured from the District Judge aforesaid leave to sell property in Delhi, but the sanction was very general and did not state terms or details of any kind. Time passed, and at last on September 30th, 1908, the guardian entered into a contract to sell 3/16ths share of specified house property in Delhi to plaintiff for Rs. 35,000. The deed was registered and Rs. 600 was paid over to the guardian before the Sub-Registrar. For this sum a receipt was taken and in that document the terms of the contract were stated in full. It seems that plaintiff wished that the minors' share in the property should be partitioned before actual purchase, and it was, therefore, agreed between him and the guardian that she should sue for partition, he undertaking to supply funds for litigation expenses up to Rs. 12,000 to be credited to plaintiff as part of the Rs. 35,000 aforesaid. Then on 13th November, 1908 he advanced Rs. 2,000 on this agreement, and the guardian proceeded to institute two partition suits, which, we may remark, have not yet been finally disposed of Then on 25th January, 1909 the guardian applied to the District Judge of Muradabad for approval of the sale to plaintiff, but that officer refused sanction, called upon plaintiff to show cause why the contract should not be rescinded and the Rs. 2,600 returned, and then asked the Delhi District Judge for an estimate of the actual value of the property under consideration. The latter made an estimate of Rs. 45,000 as the fair market value, whereupon the other District Judge offered plaintiff his option of taking the property at that figure, or buying only some 11 shops for Rs. 18,000, which was an alternative proposal made by the guardian. On 25th, February, 1910 plaintiff refused both offers, and the District Judge of Muradabad sanctioned the sale of 11 shops at Rs. 18,000 in the open market. Next day one Parmeshri Das having accepted the bargain, a draft deed in his favour was approved, and, when a few days later plaintiff offered Rs. 19,000, the offer was refused as too late. On 18th July, 1910 the sale to Parmeshri Das was finally sanctioned, and next day plaintiff filed against the minors alone his present claim, which is for Rs. 2,600 advanced *plus* Rs. 574-4-3 interest and expenses.

It is convenient here at once to dispose of a contention of Mr. Moti Sagar's. He argues that the sanction of 3rd August, 1906 was sufficient authority for the completion of the sale, that the guardian's application of 25th January, 1909 was uncalled for, and that the District Judge of Muradabad should not have interfered any further with the guardian's discretion. In support he quotes Ss. 29 and 31 [especially sub-S. (3) (*a*)] of the Act; but, in our opinion, it was probably never intended that a Court should give permission to a guardian to sell the ward's property without fixing at least an

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approximate price and without clearly ascertaining what was to be sold and the value of it—as to this see S. 31 (1). Again, the guardian evidently never understood she was to have *carte blanche*, for she did ask for sanction before completing the sale, and in any case it seems to us that, even if a Court has given sanction under Ss. 29 and 31 (1), it is not beyond the power of that Court to intervene and stop the sale, if it finds something detrimental to the ward's interests is contemplated. Lastly, the Court had never, even in the most general way, sanctioned the actual contract entered into with plaintiff, *viz.*, the arrangement that the guardian was to get advances from him, to count as part of the purchase-money, in order to bring partition suits for the benefit of plaintiff. We find, therefore, that the Court was justified, both in law and in equity, in its order refusing sanction to the sale to plaintiff and to the contract of 1908.

But plaintiff's Counsel argues that in any case he is entitled to refund of his actual advances, and he quotes rulings dealing with the well-known doctrine that a minor, even if he is entitled in law to repudiate a transaction done on his behalf by his guardian, should restore to the other party benefits received. The law on that subject is clear and can be stated in a few words, and we need not discuss the rulings in which it is to be found. If a plaintiff sues to undo a transaction entered into by his guardian in his name during his minority, then, *if the other party has acted in good faith and the plaintiff or his estate has actually received benefit*, the plaintiff must, as a condition precedent to the undoing of the said transaction, restore the said benefit. If, however, the minor or *quondam* minor is the *beatus possidens* and is being sued by the other party, ordinarily, according to the authorities, a claim against the minor for refund of the benefit would fail. Passing over the latter proposition, however, and looking at the history of the case, one cannot help seeing how hopelessly plaintiff fails in connection with the first proposition. The litigation to be undertaken was not for the benefit of the minors in intention and there is no evidence that it has turned out so in fact, and one has only to look at the discreditable transaction with Ali Hussain, step-father of defendants, discussed by the lower Appellate Court at page 10 of the paper-book but not mentioned by Mr. Moti Sagar as part of the history of the case, to see that plaintiff can never be allowed to say that his hands are clean and that he has acted in good faith. Apparently plaintiff was ready to pay not only Rs. 35,000 but some thousands more for the bargain, and the diversion of those additional thousands from the pockets of the minors into the pocket of Ali Hussain puts plaintiff out of Court at once.

We entirely agree, therefore, with the learned Divisional Judge in holding that the suit fails, and we wholly dissent from the first Court's way of looking at the case.

The appeal is, therefore, dismissed with costs.

R.M./R.K.

Appeal dismissed.

A. I. R. 1915 Lahore 358

SHADI LAL, J.

Gokal Chand—Appellant.

v.

The Lahore Bank, Ltd.—Respondents.

First Misc. Appeal No. 1639 of 1914, decided on 16th January, 1915, from the Order of Dist. Judge, Lahore, dated 27th April, 1914.

(a) **Companies Act (6 of 1882), S. 169—Forfeiture of shares—Conditions necessary—There must be power intention to forfeit—Intention must be actually carried into effect.**

To constitute a valid forfeiture of shares there must be power to forfeit, and intention to forfeit, and a notice of that intention, and further, the intention must be actually carried into effect. A default in payment of calls does not *ipso facto* bring about a forfeiture, nor does the intention to forfeit not carried into effect amount to a forfeiture. [P. 359, C. 1.]

(b) **Companies Act (6 of 1882), S. 169—Forfeiture of share—Company has option to forfeit or not.**

A Company has got the option to forfeit or not and unless the option is exercised the defaulter continues to be a member of the Company. Even where the Articles provide that a forfeiture shall take place *ipso facto* on default in payment of calls, defaulting share holder cannot insist on the clause acted upon. *In re East Kongsberg Company*; *Brigg's* case. 14 W. R. 244, foll [P. 359, C. 1]

Gokal Chand—for Appellant.

Nihal Chand Mehra—for Respondents.

Judgment.—This is an appeal under S. 169 of the Indian Companies Act,

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