

Raj Rani Vs. Prem Adib

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Court : Mumbai

Decided On : Jul-21-1948

Reported in : AIR1949Bom215; (1949)51BOMLR256

Judge : Desai, J.

Appeal No. : O.C.J. Suit No. 1510 of 1947

Appellant : Raj Rani

Respondent : Prem Adib

Judgement :

Desai, J.

1. This suit raises a question of importance so far as contracts of service entered into on behalf of minors are concerned. Contracts involving service by minors may be of considerable value in cases like the one before me where the minor is allotted the role of a Cinema Star or is employed as an artist for the production of a film of considerable value.

2. The plaintiff in this case is a minor girl who has brought this suit suing by her next friend, her father and natural guardian, one Dhirajsingh Muramal, for the recovery of a sum of Rs. 8,708-10-0 being the amount of damages alleged to have been suffered by her by reason of a breach of a contract entered into by

Dhirajsingh Muramal with the defendant for and on her behalf.

Paragraph 1 of the plaint states as follows :-

On or about January 15, 1947, the defendant orally agreed with the plaintiff's father named Dhiraj Singh Muramal, to employ the plaintiff as an artist in the defendant's concern called the Prem Adib Pictures for a period of one year commencing from the 15th January 1947 at the salary of Rs. 9,500 to be paid in twelve equal monthly instalments. As the plaintiff was and is a minor the said Dhiraj Singh Muramal entered into the said agreement on behalf of and for the benefit of the plaintiff. It was inter alia agreed between the said Dhiraj Singh Muramal and the defendant that the plaintiff was to attend the defendant's office, shootings and rehearsals as and when required by the defendant. The terms of the said agreement were recorded in a writing, a copy whereof is hereto annexed and marked 'A',

3. Exhibit 'A' to the plaint is a curious document as read in conjunction with the plaint. It reads as follows :-

Agreement drawn and signed on January 15, 1947, between Mr. Prem Adib the Proprietor Of Prem Adib Pictures, Andheri, a film producing concern hereinafter called the producer of the one part and Miss Raj Rani residing at Pattatrey Bhuvan, Plot No. 176, Sir Bhal Chandra Road, Hindu Colony, Dadar, Bombay, hereinafter called the artist.

This is to confirm and put on record the following terms and conditions arrived at between us as per our personal talk and mutual agreement.

That the period of your contract will be from this day of agreement January 15, 1947, to January 14, 1948.

That you will be paid a lump sum amount of Rs. 9,500 (rupees nine thousand and five hundred only) for your full period of contract in twelve equal instalments.

That you will attend the office and the shooting and the rehearsals punctually as and when required.

That you will attend Gramophone disk and or Track recording without any obligation to the Company for that you will neither get nor demand any extra amount as royalty or remuneration, stipend or bonus apart from the above-mentioned amount fixed.

That all other terms and conditions shall be as are prevailing in agreements and contracts of like nature.'

At the end of the contract there appears a signature :

'For Prem Adib Pictures.

(Sd.) Prem Adib,

Proprietor.

Against that, the following words appear:

I confirm and agree.

(Sd.) Raj Rani.

(Sd.) Dhiraj Singh.

It is stated on behalf of the plaintiff that the oral agreement with the plaintiff's father was in the same terms as exhibit A and that as that agreement was not reduced to writing, the plaintiff's father is not precluded from giving evidence of the terms of that agreement merely because he has put his signature on exhibit A by way of attestation. This contention forms the subject matter of issue No. 2, which was allowed by me at the request of the parties to stand over as it appeared to me that the plaintiff's contention was prima facie correct.

4. The plaint proceeds to state that in pursuance of the agreement the plaintiff carried out her part of the contract, but the defendant in or about February 1947 engaged another artist for the role allotted to the plaintiff; that the defendant called upon the plaintiff to attend shooting and or rehearsals, but when the plaintiff attended she was not given any work and was kept idle. The plaintiff states that in

March, 1947, the defendant falsely alleged breaches of the agreement on the part of the plaintiff and wrongfully terminated the contract of service and refused to pay to the plaintiff or her father the salary due to her. The plaintiff states that the agreement was entered into by her father for and on behalf of the plaintiff and that the same was for her benefit and that she was ready and willing to perform her part of the agreement, but the defendant prevented the plaintiff from earning her salary during the remainder of the term whereby she suffered damages to the extent of Rs. 8,708-10-0. The damages are computed on the footing of the difference between Rs. 9,500, being the amount agreed to be paid to the plaintiff under the agreement dated January 15, 1947, and the sum of Rs. 791-5-4 which was the amount received by the plaintiff from the defendant.

5. By his written statement the defendant says that the parties to the agreement were the plaintiff and the defendant. The defendant states that he has no personal knowledge as to whether the plaintiff is or at the date of the agreement was a minor. He further says :

As the plaintiff states that at the date of the said agreement the plaintiff was a minor the defendant submits that the said agreement is void in law and not enforceable and the plaintiff is not entitled to maintain this suit in respect thereof. In the alternative and in the event of its being held that the agreement was arrived at between the defendant and the plaintiff's father Dhiraj Singh, the defendant will submit that the plaintiff being not a party to the agreement is not entitled to sue in respect thereof.

6. By para. 2 of his written statement the defendant submits that the terms of the agreement having admittedly been reduced to writing, no oral evidence is admissible of the terms thereof. Without prejudice to his aforesaid contention, the defendant denies that on or about January 15, 1947, or at any time there was any oral agreement arrived at, between the defendant and the plaintiff's father Dhiraj Singh Muramal as alleged or otherwise on behalf of or for the benefit of the plaintiff. The defendant denies that the plaintiff was always ready or willing to perform her part of the agreement and says that the breach of the contract was committed by the plaintiff.

7. The defendant has filed his counterclaim for the recovery of a sum of Rs. 5,000 as damages sustained by the defendant by reason of the plaintiff's breach of the contract. In para. 10 of his written statement the defendant says that he will maintain his counterclaim only in the event of this Honourable Court holding that the agreement is valid and enforceable in spite of the fact that the plaintiff was a minor at the date of the counterclaim.

8. On these pleadings the following issues were raised :-

(1) Whether the defendant entered into an oral agreement with the plaintiff's father as alleged in para. 1 of the plaint ?

(2) Whether the terms of the oral agreement having been reduced to writing, any oral evidence is admissible as to the terms of the alleged oral agreement ?

(3) If the agreement was with the plaintiff's father, whether the plaintiff is entitled to maintain this suit?

(4) Whether at the date of the agreement, the plaintiff was engaged by Messrs. Kanu Desai Productions; and if so, whether the defendant knew and did not object to the same ?

(5) Who committed a breach of the said agreement and

(6) What is the amount, if any, payable by one party to the other ?

9. At the hearing before me the parties requested me to try issue No. 3 as a preliminary issue. That was on the footing and on the assumption that the defendant had entered into an oral agreement with the plaintiff's father as alleged in para. 1 of the plaint and that the plaintiff was then a minor. I agreed to try this issue as a preliminary issue in order to save the cost of the hearing of the other issues, which would mean a protracted hearing and when would compel me, in my judgment, to make remarks against the plaintiff or the defendant affecting their reputation in their profession, which I would like to avoid.

10. It is stated in the plaint that the contract was entered into by the plaintiff's father for and on behalf of the plaintiff. Now under Section 183 of the Indian

Contract Act, a minor is not entitled to employ an agent. The contract, therefore, though it is made for and on behalf of the minor by a person who purported to act as his agent, is not the contract of the minor. In fact under Section 11 of the Contract Act a minor cannot enter into a contract. Therefore, in order that there should be a contract, it must be a contract entered into with the guardian of the minor by the other party to the contract.

11. Two questions, however, of considerable importance arise in such a case :

(1) What is the consideration for such a contract and

(2) What is the measure of damages for breach of such a contract?

Section 2(a) of the Contract Act provides as follows :-

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

The words 'to do' in Section 2(a) include to my mind a proposal and an undertaking that someone else shall, at the request of the proposer, do something. Under Section 2(b) a proposal, when accepted, becomes a promise. Under Section 2(d) when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. Under Section 2(e) every promise and every set of promises, forming the consideration for each other, is an agreement. Under Section 2(f) promises which form the consideration or part of the consideration for each other are called reciprocal promises. Under Section 2(g) an agreement not enforceable by law is said to be void. Under Section 25 an agreement made without consideration is void except in the cases mentioned in that paragraph.

12. Bearing these elementary propositions in mind, what I have got to decide is : what was the consideration for the agreement if any arrived at between the plaintiff's father and the defendant? The promise of the father that the plaintiff would serve and the promise of the defendant that he would in that case pay the

plaintiff her salary will be sufficient to constitute an agreement. But what was the consideration for which the defendant promised to pay the plaintiff her salary In my opinion it was not the bare promise of the plaintiff's father that the plaintiff will serve the defendant in terms of the contract, and his liability to pay damages for breach of that undertaking which formed the consideration, but the real consideration, or at least a part of the real consideration, was the promise of the plaintiff to serve in terms of the agreement between the plaintiff's father and the defendant. If the plaintiff instead of having been a minor had been a major, such promise to serve would form good consideration within the meaning of Section 2(d) of the Contract Act, though the consideration moved from a third party. Under Section 11 the plaintiff was not competent to enter into a contract and, therefore, her promise would not be enforceable against her. In my opinion, therefore., the plaintiff's promise to serve supplies no consideration and the contract was therefore void.

13. I came to the above conclusion on a bare reading of the relevant sections. But I find on going through the authorities that my view is fortified by the expression of the opinion of the learned Judges reported in *Raghava Chariar v. Srinivasa Raghava Chariar*. I.L.R. (1916) Mad. 308 Srinivasa Ayyangar J. at p. 823 says :

It is no doubt true that if the infant is incapable by reason of tender age of assenting to a proposal, there can in fact be no contract at all. As pointed out in *Parsons on Contract*, Volume 1, page 340, 'an infant, using the word in its common meaning, that of a child who had not left its mother's arms, cannot make a contract in fact.' The question then, whether a minor who has assented to a proposal and has therefore become a promisee, is entitled to enforce the promise, depends upon the question whether the promise is supported by consideration. This rule would equally apply to mutual promises.

At p. 324 his Lordship says :

Where the consideration for the promise of the adult is a promise by the minor, inasmuch as the minor cannot make a promise enforceable in law, the consideration necessarily fails, and the promise of the adult does not therefore become a contract; as a learned writer says : 'The promise of infants should never

have been held to be promises in law or to constitute a consideration for another promise.

14. In my opinion there being absence of the consideration contemplated by the parties, there was no contract between the plaintiff's father and the defendant which was enforceable at law, and there is no breach of a contract in respect of which the plaintiff's father or the plaintiff can sue for damages. I have set out above the paragraphs of the plaint and the terms of the contract annexed to the plaint which show clearly to ray mind that the entire consideration for the agreement was the plaintiff's promise to serve. But in fact the plaintiff's promise did not constitute any consideration in law and therefore there was in law no contract.

15. Assuming that the bare promise and undertaking of the plaintiff's father to the defendant formed' a consideration for the defendant's promise to pay the plaintiff her salary, what would be the measure of damages in such a case This question was considered by Kemp J. in a case reported in Abdul Razak v. Mahomed Hussen (1916) 19 Bom. L.R. 164 In that case the plaintiff Abdul Razak sued the defendant Mahomed Husen for breach of an agreement whereby the defendant agreed to give his daughter in marriage to the plaintiff. Kemp J. held that in suits of this nature between Mahomedans the plaintiff cannot recover the damages peculiar to an action for breach of promise of marriage under the English law. This case is referred to by Beaumont C.J. in his judgment in Khimji Kuverji v. Lalji Karamsi. (1940) 43 Bom. L.R. 35 The relevant passage is at p. 45, where Beaumont C.J. says as follows :-

In Abdul Razak v. Mahomed Huisen a Muslim father of the bridegroom sued the father of the bride for damages for breach of his contract to give his daughter in marriage. That was a case of a contract between the two parents, and Mr. Justice Kemp decreed the suit but held that the measure of damage must be based on the damage suffered by the plaintiff's father, and not on the damage suffered by the prospective bridegroom in the loss of a wife; and if such a suit lies, I agree with the view of Mr. Justice Kemp as to the measure of damage.

It seems that Beaumont C.J. was in error in thinking that in Abdul Razak v. Mahomed Hussen the plaintiff was the father of the bridegroom and that the

contract was between the respective parents of the prospective bridegroom and the bride. The plaintiff in fact was the bridegroom himself, but I respectfully agree with the view of Beaumont C.J.

16. In my opinion if the only consideration for the contract was the promise of the plaintiff's father that the plaintiff shall serve the defendant, then the damages which the plaintiff's father could have recovered from the defendant in a suit filed by him against the defendant would be the damages sustained by the plaintiff's father himself. I do not see any principle of law under which the plaintiff, who is not bound by the agreement, can obtain higher damages than what the plaintiff's father could himself have recovered had he chosen to file the suit, simply because the plaintiff may be permitted by law to sue in her own name in respect of such a contract. It is clear on looking at the particulars of damages that what the plaintiff seeks to recover is damages sustained by herself and not by her father. Those damages, in my opinion, the plaintiff cannot recover.

17. I shall now consider whether there is any provision in any of the text books or any of the Indian statutes or whether there are any judgments of the Courts in India which should lead me to hold that contracts of service entered into by or on behalf of minors are valid and binding. Trevelyan on Minors, Sixth Edition, at p. 20, says this :

A minor can recover for work and labour done by him and for money paid by him, and money had and received for his use. He can also recover compensation for a non-gratuitous act done by him from the person enjoying the benefit of such act (see Section 70 of the Indian Contract Act) as for instance he can recover wages or payment for piece-work, or work as a servant (see section...32 of the Presidency Small Cause Courts Act (XV of 1882)...

A minor may enter into a contract of apprenticeship, but he cannot be sued thereon [See Pol' lard v. Bouse I.L.R. (1910) Mad. 288

18. The Apprentices Act (XIX of 1850) is the only Act, so far as I can see, which provides for contracts in the nature of contracts of service which are binding on minors. That Act was passed, as the preamble to the Act shows, 'for better

enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments, by which, when they come to full age, they may gain a livelihood.' It contains special provisions which I need not set out herein at length. Under Section 1 of that Act any child, above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage. By Section 8 of the Act it is provided that every contract of apprenticeship shall be in writing, according to the form given in the schedule (A) annexed to this Act, or to the like effect, etc. Section 9 requires that every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding. The form of the agreement annexed to schedule A to the Act is as follows :-

This agreement made the...between A.B., of...and C.D., of...witnesseth that the said A.B., doth this day bind E.F., a boy (or girl) of the age of...years completed, son (or daughter) of the said A, B. to dwell with and serve the said C.D., as an apprentice,...during all which term the said apprentice shall duly and faithfully serve the said CD.,,and the said C.D., in consideration of the premium or sum of...paid by the said A.B., to the said CD., and of faithful service of the said E.F., doth covenant and agree with the said A.B. that he will teach or cause to be taught to the said E.P., in the best way and manner that he can, the trade of a...during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome and sufficient food, clothes, lodging, washing, and all other things necessary, fit and reasonable for an apprentice : and further, (here insert any special covenants).

Section 10 of the Act provides that no such contract shall be valid unless it be executed in the manner aforesaid.

19. The Form of the agreement clearly shows that though the agreement may be signed by the apprentice as required by the Act, the agreement is entered into between the employer and the father or other relation of the minor who contracts on behalf of the minor that the minor shall serve the employer. In view of this, it is difficult to understand why Trevelyan says that a minor may enter into a contract of apprenticeship.

20. In the Fourth Schedule to the Civil Procedure Code (Act XIV of 1882) there is a Form annexed as Form No. 65. (This Form is not reproduced in the Schedule to the Civil Procedure Code, Act V of 1908), It is the Form of a plaint where the apprentice sues the employer. That Form states as follows :-

That on the...day of...at...the Defendant entered into an agreement with the plaintiff and his father E.F. and that the plaintiff entered into the service of the defendant with him after the manner of an apprentice, etc.

Here again it is difficult to see why the agreement is said to be with the plaintiff. The question whether a minor can bring a suit in respect of a contract of apprenticeship or of service entered into on his behalf by his father or guardian is not free from difficulty, and I propose to consider that question later on. To my mind the provisions of the Apprentices Act must be strictly limited to the cases therein provided. So far as this suit is concerned, suffice it to say that the contract in suit is not a contract of apprenticeship.

21. In English law contracts of service and apprenticeship are put on the same footing and are put in the same category as contracts for necessities. In *Purshotamdas Tribhovandas v. Purshotamdas Maigaldas* I.L.R. (1896) 21 Bom. 23 Candy J. at p. 33 says :-

A contract of a father to give his daughter in marriage is analogous to the contract of a father apprenticing his son and binding himself for the performance by his son of all and every covenant on his part.

At the proper time I shall consider whether the contract of marriage is analogous to and stands on the same footing as the contract of apprenticeship in every respect.

22. In *Fernandez v. Gonsalves* (1924) 26 Bom. L.R. 1033 Taraporewala J. after referring to the above observations of Candy J. in *Purshotamdas Tribhovandas v. Purshotamdas Mangaldas* says as follows at p. 1045 :

The question there considered was not the liability of the minor but of the father. But what I am concerned with here is the well recognized principle that the father can enter into a binding contract for the benefit of his minor child which contract is enforceable at law. A contract of apprenticeship is held to be good because it is considered to be for the benefit of the minor; in the same way a contract of marriage is for the benefit of the minor, and I see no reason why a father should not be held to have power to make a contract of marriage on behalf of his minor child. I have not been able to find in the English reports a single case where the father has entered into a contract of marriage on behalf of his minor child. However to my mind in India the Court would be justified in applying the principles of contracts of apprenticeship in England in so far as to hold that the contract of marriage in India stands on the same footing as being one for the benefit of the minor and being one which the father can enter into on behalf of the minor. Neither a contract of personal service nor a contract of marriage can be ordered to be specifically performed so that in either case the apprentice or the girl cannot be compelled to carry out his or her part of a contract against his or her wishes. However, if it is an enforceable contract, the other result, namely, the liability in damages of the party making the breach of the contract, would follow.

23. Both these judgments fail to notice that in India a contract of apprenticeship is valid because of the express provisions of the Apprentices Act (XIX of 1850) and only as provided for by that Act. In view of those observations, however, I have carefully considered whether the contract of service stands on the same footing as a contract of apprenticeship or a contract of marriage of a minor. For the reasons I have set out in this judgment I am constrained to hold that the contract of personal service does not stand on the same footing as the contract of apprentice or a contract of marriage of a minor.

24. I have not come across any case decided in any of the High Courts in India where the legal position in reference to the contract of service concerning a minor

was decided or considered, and I have therefore to decide this case on the sections of the Indian Contract Act only, cited above.

25. I have hitherto carefully avoided considering the position in English law as regards contracts of infants. But I think it is necessary, in spite of the vital difference in English law and Indian law on this point, briefly to set out the position in English law.

26. Simpson on the Law of Infants, fourth edition, at p. 7, says :

The acts of an infant fall under three heads, according as they are (1) void, (2) voidable, or (3) binding.

Section 1 of the Infants Relief Act, 1874, makes void many contracts by infants which were formerly voidable only. It is in the following words :-

All contracts,...henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void.

Halsbury in Volume XVII, page 604, paragraph 1301, states as follows :-

At common law, an infant's contracts are, in general, voidable at the instance of the infant, though binding upon the other party. Exceptions to this rule are contracts for necessities, and certain other contracts such as contracts of service and apprenticeship, if they are clearly for the infant's benefit; such contracts are good and binding upon an infant. Contracts which are obviously prejudicial to an infant are wholly void.

27. In English law contracts of service and apprenticeship are put on the same footing as contracts for necessities. In Coke upon Littleton, 172A, the note as to the power of an infant to bind himself by a writing states that there are some exceptions to his general inability, as 'an infant may bind himself to pay for his necessary meat, drink, apparel, necessary physic, and such other necessities, and likewise for his good teaching or instructions, whereby he may profit himself afterwards.' If, therefore, there is a contract of service or apprenticeship, which is

for the benefit of the infant, it would, according to English law, be enforced against the infant whether the contract was entered into by the infant or on behalf of the infant. A notable instance of the enforcement of such a contract against the infant is to be found in the case of *Roberts v. Gray*. [1913] 1 K.B. 520 In that case Cozens-Hardy, Master of the Rolls, says that the doctrine of an infant's contract for necessities being binding was applied not merely to bread and cheese and clothes, but to education and instruction. In that case of *Roberts v. Gray*, John Roberts who became well known for his reputation as a great billiard player entered into an agreement with Joseph Gray and Harry Gray, the father of Joseph Gray, that Joseph Gray should accompany John Roberts on a tour of the world as professional billiardists. It was held by the Court of Appeal that the education which a billiard player of the receptive capacity of Joseph Gray would get from playing continually month after month with John Roberts was so valuable that it amounted to necessities in the sense of a labour and education contract. It was held in terms that the contract was for necessities. In that case 1500 damages was awarded against the defendants. Joseph Gray appealed against the judgment of the Lord Chief Justice who awarded those damages against him in the first instance, but the Court of Appeal dismissed the appeal.

28. Now though according to English law the minor would be liable in the case of a contract of service where the contract was for his benefit, it is clear that under Section 11 of the Indian Contract Act the minor's contract being void, the minor would not be held liable (see *Mohori Bibee v. Dhurmodas Ghose*,) (1902) L.R. 30 IndAp 114

29. The contract of apprenticeship entered into by the guardian is protected by the Apprentices Act (XIX of 1850) provided the case falls within the terms of that Act, but no such exception is made in the case of contracts of service. I realize that as a result of this judgment minors may lose the benefit of contracts of service which have been considered so beneficial to them as to be put in the category of necessities. I am, however, not concerned with the policy of the Legislature under which all contracts of minors were made void and therefore unenforceable by or against the minor.

30. Section 68 of the Indian Contract Act, which falls under the Chapter dealing with certain relations resembling those created by a contract, says that if a person incapable of entering into a contract is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. Apart from that, the minor is not personally liable though his property may be made liable where the contract is made by his guardian who has the authority to bind his property. It is held that the minor is not liable under Section 70 of the Indian Contract Act for breach of an implied contract: see *Bankey Behari Prasad v. Mahendra Prasad*. I.L.R. (1940) pat. 739

31. As the minor's contract is a void contract, he is not entitled to sue for damages for breach of such contract including the contract of service where the contract was entered into by the minor himself. The rights which a minor may gain under Section 70 of the Indian Contract Act are rights which, strictly speaking, do not arise by virtue of the contract made by the minor but by reason of the relationship resembling those created by a contract. It has been held in certain cases that where the minor has already given the full consideration to be supplied by him, he is entitled to enforce the contract: see *Hanmant Lakshman v. Jayarao Narinha* I.L.R. (1888)13 Bom. 50 *Kaghava Chariar v. Srinivasa Raghava Chariar* I.L.R. (1916) Mad. 308; and *Abdul Ghaffar v. Piare Lal-Salig Ram*. (1934) I.L.R. 16 Lah. 1. I am not concerned with those cases because the contract that I am considering is an executory contract where the consideration is still to be supplied and has not already been supplied as in those cases by the minor.

32. If then a minor cannot sue on a contract of service entered into by him personally, is he entitled to sue for obtaining practically the same relief, simply because the contract has been entered into for and on his behalf and for his benefit by his guardian? I have already referred to the fact that a minor cannot employ an agent, and, therefore, it cannot be said that the contract was entered into 'for and on his behalf' in that sense. The expression 'for his benefit' is easily understood when one is speaking of a minor's contract according to English law, for there the contract is held binding on the minor, if it is for the benefit of the minor. But according to Indian law the contract is not binding on the minor, and,

therefore, on the ground of want of mutuality, one should hesitate considerably before such a contract is held binding on the other side. I am prepared to concede that such contracts of service may be 'for the benefit of the minor.' But are they therefore binding on the other party 'Or is the minor entitled to sue in respect of such contracts This brings me to a consideration of the cases in which a third party has been held entitled to sue in his own name in respect of a contract made by two parties under which contract the third party gets a benefit, or which contract is made 'for his benefit.'

33. I shall first consider the question of the third party's right to sue on such a contract on first principles. When a contract is arrived at between A and B, what induces A to enter into the contract with B is not only the advantage which A will derive but also the fact that B is a reasonable man and that he is a man of financial stability and a respectable man. It does seem to be hard on A that when he binds himself by his promise to B only, he should be held liable to C also in a case where a benefit under the contract is reserved for C, with the consequence that he would be liable to two actions in respect of the same promise. It is a matter of common experience that the next friend of a minor or a lunatic bringing a suit is not always reasonable in the conduct of the suit. The case becomes a case of greater hardship if C is not lunatic but is inclined to behave like a lunatic. It would therefore seem unfair to impose a contractual liability on A towards C which lunatic he had not undertaken to discharge at the instance of C. Under the abovementioned agreement B had only conferred an authority upon A to pay the money to C, but that authority may be revoked by B at any moment. It may be that left to himself B may not have sued A. Why should then C be entitled to sue A merely because of a benefit provided for by B in his contract with A? Is he entitled to do so even against the wish of B or where there is no evidence that B has authorized C to sue A in the case where a trust is created by B and A has accepted that trust and A has accepted the position of a trustee towards C, C acquires a right of property in himself and he would therefore be entitled to sue A irrespective of the consent of B or even against the wish of B. Apart from such a case and the other cases which form an exception to the general rule, it is B only who can sue A.

34. I shall next turn to the Indian Contract Act. The definition of 'promisor' and 'promisee' rigidly excludes the idea that the contract can be enforced by a person who is not a party to the contract, and there is nothing in Section 2 to encourage such an idea. It was so stated by Rankin C.J. in *Krishna Lal Sadhu v. Pramila Bala Dasi*. (1928) I.L.R. 55 Cal. 1315, 1326.

35. In *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (1911) L.R. 89 I.A. 1, s. c. 14 Bom. L.R. 5 the suit was brought by three plaintiffs (of whom the first was an infant by his next friend and duly appointed guardian) alleging that they were respectively the owners by right of inheritance of the property claimed in the plaint; that the defendant had agreed to sell them the property at a price; and they prayed for specific performance of the agreement. The Subordinate Judge passed a decree as prayed and the High Court affirmed it. This decision was reversed by the Privy Council. In that case one Mr. Garth was at the time of the purchase the manager of the estate of respondent No. 1 who was then a minor, and he entered into the contract with the appellant, (Mir Sarwarjan), as such manager. It was assumed before the Privy Council that the contract was not intended to bind the manager personally and that it was intended to bind the minor or the minor's estate. It was also assumed that the purchase was an advantageous purchase for the minor. Lord Macnaghten in his judgment at p. 6 says as follows :

It is not within the competence of a manager of a minor's estate or within the competence of a guardian of a minor to bind the minor or minor's estate by a contract for the purchase of moveable property, and they are further of opinion that as the minor in the present case was not bound by the contract there was no mutuality, and that the minor who has now reached his majority cannot obtain specific performance of the contract.

It would, therefore, seem that the mere fact that the contract is for the benefit of the minor does not entitle the minor to sue on the contract. The minor would have been entitled to specific performance of the contract if he had been a major instead of a minor; but being a minor, he could not sue as there was no mutuality in the contract.

36. In the case of *Jamna Das v. Ram Autar Pande* the action was brought by a mortgagee to enforce against a purchaser of the mortgaged property an undertaking that he entered into with his vendor. It was held that the mortgagee had no right to avail himself of that as he was no party to the sale. The purchaser had entered into no contract with him and was not personally bound to pay this mortgage debt. It was held 'that he was not a person from whom, in the words of the 90 the section of the Transfer of Property Act, 'the balance is legally recoverable.'

37. In *Dunlop Pneumatic Tyre Company, Limited v. Selfridge and Company, Limited* [1915] A.C. 847 Lord Haldane says at p. 853 :

My Lords, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property, as, for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract in *persmam*.

38. In *In re : Botherham Alum and Chemical Company* (1883) 25 Ch. D. 103 Lindley L.J. says as follows at p. 111 :

But an agreement between A and B that B shall pay C, gives C no right of action against B. I cannot see that there is in such a case any difference between Equity and Common Law, it is a mere question of contract. It is said that Mr. Peace has an equity against the company because the company has had the benefit of his labour. What does that mean If I order a coat and receive it, I get the benefit of the labour of the cloth manufacturer; but does any one dream that I am under any liability to him It is a mere fallacy to say that because a person gets the benefit of work done for somebody else he is liable to pay the person who did the work.

39. In *National Petroleum Company Limited v. Popatlal* (1986) 38 Bom. L.R. 610 it was held that where A and B enter into a contract under which A agrees to indemnify B against all his debts, a creditor of B cannot sue A on the contract.

A person who is not a party to a contract is not entitled to maintain an action upon that contract. This rule is subject to well-recognised exceptions, e. g., a person who is not a party to a contract can sue on it if he is claiming through a party to the contract or if he is in the position of a cestui que trust or of a principal suing through an agent, or if he claims under a family settlement.

40. The fact that consideration may move from a third party does not involve the proposition that a third party can sue upon a contract.'

41. In *Great American Insurance Co. v. Madanlal Sonulal* (1985) 37 Bom. L.R. 461 the head-note reads as follows :-

The plaintiff was a minor and the sole surviving coparcener of a joint Hindu family. The business of the family was carried on by the plaintiff's sister's husband, who acted as his guardian. The guardian effected an insurance against fire with the defendant company on cotton bales belonging to the plaintiff in the plaintiff's name. Some of the bales having been destroyed by fire, the plaintiff sued by his guardian as his next friend to recover the amount of loss caused by fire from the defendant company. An issue was raised whether the contract of insurance was void on the ground of plaintiff's minority. It was held:-(1) that the contract sued upon was not a contract which was made by a minor although it was made on behalf of the minor by a person who acted as his guardian; (2) that the plaintiff-minor having been a person for whose benefit the contract was made, was entitled to sue on the contract; (3) that, therefore, the defendant company had no defence to the suit.

This case has been subjected to the following criticism in Mulla's Contract Act, p. 64 :

The principle on which this decision is based is not altogether easy to understand. If the guardian contracts as the minor's agent, it is the minor's contract and therefore a nullity. If it is the guardian's contract, he should alone be entitled to sue, though he may be under an obligation to hold any benefit under the contract for the minor's benefit.

I must point out that in that case (*Great American Insurance Co. v. Madanlal*) the guardian had taken out the policy of insurance in the name of Surajmal Sonulal, which was the name in which the joint Hindu family of which the minor was the sole surviving coparcener was carrying on business in cotton and other commodities. The guardian therefore was acting in the position of a trustee and the plaintiff was occupying the position of a cestui que trust. The defendant company knew that the business was carried on by the minor and by reason of the fact that they issued the policy in the name of Surajmal Sonulal, they undertook an obligation not only towards but to the minor for the payment of the loss. The Contract was not one which the guardian could set aside at his will. He could not hold the moneys received from the insurance company for his own benefit or make it payable to someone else. The guardian had the authority to insure the property and to recover from the property of the minor the premium, if paid by him, though, as Beaumont C.J. points out, the premium was presumably paid from the minor's property. The insurance company could recover the premium if unpaid from the minor's property. It was therefore the minor who supplied the consideration for the insurance company's promise to pay the amount of the loss to him. As the guardian was in the position of a trustee acting for the minor, the moneys recovered by the guardian would be held by him as trust moneys and not as his own property which would devolve on the Official Assignee on his insolvency. On the face of the policy the insurance money was payable to the minor. The substantive right to sue was in the minor. The omission to join the guardian as a party to the suit did not make any difference as the insurance company on payment to the minor of the loss pursuant to the decree of the Court would obtain a complete discharge of their liability under the policy.

42. In *Les Affreteurs Reunis Societe Anonyme v. Leopold Walford (London) Limited* [1919] A.C. 801 the facts were these. 'It is usual for a charter-party to provide that a commission shall be payable to the broker by whom the charter is negotiated. The broker is not a party to the charter-party, and it is the practice for the charterer, if necessary, to sue the shipowner for the amount of the broker's commission as trustee for the broker.' In that case the action had been brought by the broker himself, but by consent it was treated as brought by the charterers as trustees for him. The House of Lords recognized the practice and gave judgment

in his favour. At p. 806 Lord Chancellor Birkenhead says :

My Lords, so far as I am aware, that case (*Robertson v. Wait*, 8 Ex. 299) has not before engaged the attention of this House, and I think it right to say plainly that I agree with that decision and I agree with the reasoning, shortly as it is expressed, upon which the decision was founded. In this connection I would refer to the well-known case of *In re Empress Engineering Company* (16 Ch. D. 125). In the judgment of Sir George Jessel M.R., the principle is examined which, in my view, underlies and is the explanation of the decision in *Robertson v. Wait*. The Master of the Rolls uses this language : 'So, again, it is quite possible that one of the parties to the agreement may be the nominee or trustee of the third person. As Lord Justice James suggested to me in the course of the argument, a married woman may nominate somebody to contract on her behalf, but then the person makes the contract really as trustee for somebody else, and it is because he contracts in that character that the cestui que trust can take the benefit of the contract.'

43. I am bound by the decision of the Appeal Court in *Great American Insurance Co. v. Madanlal Sonulal* (1935) 37 Born. L.R. 461 but I am also of the opinion that that case was rightly decided. Even if the contract in that case had been entered into by the minor himself and he had already paid the premium, the minor would have been entitled to recover the loss on the authority of the cases already referred to by me. The head-note in that case (*Great American Company's case*) says 'that the plaintiff-minor having been a person for whose benefit the contract was made, was entitled to sue on the contract.' I am, however, not inclined to read that observation, for the reasons hereinafter set out, as laying down that in every case where a contract is made for the benefit of the plaintiff-minor, the minor would be entitled to sue on the contract.

44. It was at one time thought that if the person who was to take a benefit under the contract was nearly related by blood to the promise a right of action would vest in him. The case of *Tweddle v. Atkinson* (1861) 1 B. & Section 393 is conclusive against this view.

45. In *Shanhar Vishvanath v. Umabai* I.L.R. (1813) 37 Bom. 471 it was held that though the insurance policy was a contract between the deceased and the insurance company expressed to be for the benefit of the wife of the assured, it was within the power of the assured at any time to put an end to the contract by ceasing to pay the premia or otherwise to defeat the expectation of his wife by assigning the policy to a creditor. He could divest himself of his beneficial interest in the policy only by an assignment in writing or by a signed declaration of trust. It was held that there was nothing in the Contract Act to show an intention that a person not a party to the contract can sue on it. At p. 479 Scott C.J. said :

There is however nothing in the present case to show that the plaintiff was either the promisor or the promisee and therefore a party to the agreement. There is nothing in the Act to show an intention that a person not a party to the contract can sue on it,. So far as it goes Section 2(i) is an indication to the contrary.

This case was followed in *Krishna Lal Sadhu v. Pramila Bala Dasi*. I.L.R. (1928) Cal. 1315

46. In *Adhar Chandra Mandal v. Dole Gobinda Das* I.L.R. (1936) 63 Cal. 1172 it was held that a stranger to a contract cannot take the benefit of the contract between two other persons reserving a benefit to him, unless from the terms of the contract it is clear that a trust for him is intended-see also *Jnan Chandra Mukherji v. Mano Ranjan Mitra* [1941] 2 Cal. 576 and *Subbu Chetti v. Arunachalam Chettiar* I.L.R. (1929) Mad. 270

47. In principle I do not see any distinction whether the benefit reserved under the contract is the benefit reserved for a minor, or for a married woman, or for any other person. In law a trust in favour of such third party does not arise merely because a benefit is provided for him or her. Therefore in my opinion a contract made by the father of a minor including a contract of apprenticeship or service is not a contract which the minor is entitled to sue on, on the ground that it is for his benefit, where the contract is executory and the full consideration payable by or on behalf of the minor is not paid. The work that the minor in the case before me did for a month or two was of no use to the defendant who promised to pay to the plaintiff Rs. 9,500, only if she completed the picture.

48. This brings me to a consideration of contracts of marriage of minors entered into by the father or guardian of the minor. I am of the opinion that contracts for marriage stand in a class by themselves. Rankin C.J. in the case above cited (*Krishna Lal Sadhu v. Pramila Bala Dasi*) says at p. 1327 :

I say nothing as to whether special rules of law may be applicable to communities among whom marriages are contracted for minors by parents and guardians. But putting aside such cases, I see no reason to think that the law in India contains a series of exceptions to the principles that a contract can only be sued upon as such by a party thereto.

49. In *Fernandez v. Gonsalves* : AIR1925 Bom97 Taraporewala J. was considering the question of a contract of marriage entered into by the plaintiff's father with the defendant. The parties in that case were Native Christians or Goans, Taraporewala J., referring to the case of *Mohori Bibee v. Dhurmodas Ghose* (1902) L.R. 30 IndAp 114 says this at p. 1038:

Whether their Lordships of the Privy Council would have applied the same principle to a contract of marriage is to my mind very doubtful; and, so far as I am concerned, unless there is an authority on the point which is absolutely binding on me, I am not prepared to hold that the contract of marriage made on behalf of a minor by a person, who is the natural guardian of the minor and who is the only person who could enter into such a contract, is void. The principle on which I hold the contract in this case valid is the principle which has been laid down subsequent to the Privy Council decision in cases where the Courts in India have tried to give the force of contract to agreement made by the guardian of a minor for his behalf, where the guardian has power to enter into such agreement so as to bind the minor and the agreement is for the minor's benefit.

At p. 1040 Taraporewala J. says :

It is considered in this country a sacred and essential duty of the parents and guardians, particularly of girls, to see that they are settled down in life by proper marriage, (The plaintiff in that case was a girl.)...I consider these Indian Christians and Goans, so far as the duty of making contract of marriage is concerned, on the

same footing as Hindus or Mahomedans and other communities in India, and on that footing I come to the conclusion that it is the duty of the parents to make a contract of marriage for their daughters, and that, therefore, they can make a binding contract on behalf of their daughters.

At p. 1042 he says :

The principle which the Court has to consider is this : has the guardian power to enter into the contract on behalf of the minor so as to bind the minor; and, secondly, whether the contract is for the benefit of the minor. If either of the two essentials is wanting, there would not be a contract enforceable at law, and, if both these essentials are present, it would be a contract enforceable at law. By this decision I make the contract binding on the minor which is not done in England. But to my mind, considering the difference between the social customs and manners of people in England and in this country, there is much less hardship and much less harm in my holding that the natural guardian of a minor is entitled to make a contract of marriage binding on the minor than to hold otherwise; as to hold otherwise would mean that no one could make a contract of marriage for his minor daughter for fear that the other party may at any time put an end to it without incurring any liability. The breach of a promise of marriage has much more serious consequences in India in the case of girls, inasmuch as the chances of the girl making another good match are seriously affected. I for my part am not disposed to read that result in the Privy Council judgment. In my opinion it would be revolutionizing the manners and customs of the people here if I were to hold that a contract of marriage could not be entered into by a natural guardian for a minor girl.

50. In *Mulji Thakersey v. Gomti and Kastur* I.L.R. (1887) 11 Bom. 412 plaintiff No. 1 was the father of plaintiff No. 2 and defendant No. 1 was the mother of defendant No. 2 who was her daughter. It was held that defendant No. 1 had committed a breach of the agreement by not giving her daughter (defendant No. 2) in marriage to plaintiff No. 2, and a decree was passed against defendant No. 1 for inter alia damages for breach of the contract. But the suit against defendant No. 2 was dismissed as it was held that defendant No. 2 being a minor, was not liable in

respect of that contract. This judgment was not cited before Taraporewala J. In view of the judgment in *Mulji Thakersey v. Gomti and Kastur* I.L.R. (1887) 11 Bom. 412 it is difficult to see how Taraporewala J. held that the guardian had the power to enter into the contract of marriage on behalf of the minor so as to bind the minor.

51. In *Waghela Rajsanji v. Shekh Masludin* the Privy Council said at p. 96 :

Now it was most candidly stated by Mr. Mayne, who argued the case on behalf of the respondent, that there is not in Indian law any rule which gives a guardian and manager greater power to bind the infant ward by a personal covenant than exists in English law. In point of fact, the matter must be decided by equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances. Their Lordships are not aware of any law in which the guardian has such a power, nor do they see why it should be so in India. They conceive that it would be a very improper thing to allow the guardian to make covenants in the name of his ward, so as to impose a personal liability upon the ward, and they hold that in this case the guardian exceeded her powers so far as she purported to bind her ward, and that so far as this suit is founded on the personal liability of the talukdar, it must fail.

52. In *Maharana Shri Ranmalsingji v. Vadilal Vakhatchand* (1894) I.L.R. 20 Bom. 61 it was held that a minor cannot be bound personally by contracts entered into by a guardian which do not purport to charge his estate and that Act XX of 1864 gave no power to a guardian or administrator to bind his ward by personal covenants.

53. The case of *Fernandez v. Gonsalves* : AIR1925 Bom97 was approved by the Appeal Court in *Khimji Kuverji v. Lalji Karamsi* (1940) 43 Bom. L.R. 35 though nothing is stated about what Tarapore-wala J. described as the first essential, i.e. 'the power of the guardian to enter into the contract on behalf of the minor so as to bind the minor.'

54. The head-note of the case in *Khimji Kuverji v. Lalji Karamsi* reads as follows:

Amongst Hindus a contract of marriage entered into on behalf of a minor by the minor's legal guardian and shown to be for the minor's benefit is enforceable at the instance of the minor.

Where a contract of marriage was entered into between the mother of the plaintiff, who was a minor Hindu girl, acting as her guardian and on her behalf, and the father of the defendant on behalf of the defendant who was a Hindu and a major; Held on consideration of the habits and customs prevailing amongst Hindus, that the contract being for the benefit of the minor girl could be enforced by her, and she could maintain a suit for damages for breach thereof by the defendant.

55. [note :-The reference to the case of National Petroleum Co. v. Popatlal : AIR1936 Bom344 in the judgment of Beaumont C.J. at p. 46 of that report is a mistake for Great American Insurance Co. v. Madanlal Sonulal. : AIR1935 Bom353

56. It is the decisions as to the minor's right to sue for damages in cases of breaches of contracts of marriage that have caused me the greatest difficulty in arriving at the decision which I have ultimately arrived at in the ease. In contracts of marriages as well as service, the contracts are by their nature executory, and they are entered into for the benefit of the minors. There is, however, the following point of distinction. A contract of marriage is not void for want of consideration as a contract of service by a minor is. The minor in the case of a contract of marriage is very often in this country of a very tender age. Even where the minor is of an understanding age, it is not the minor's promise, if any, to marry, which the other party relies upon for the performance of the contract. The only consideration for a marriage contract is the promise of the father that the minor will fulfil his contract by the minor's marriage at a future date, and the reciprocal promise of the other party to the contract. These reciprocal promises form the only consideration for each other and they result in a contract. The parties rely on the respectability of the father for the fulfilment of the contract. The father very often brings his personal influence to bear on the minor so that the father's contract may be honoured. Sometimes the minor carries out the father's promise at the cost of his personal happiness. In a contract of service, what the other party relies upon is the

promise of the minor to serve and his actual service from day to day. The employer agrees to pay the salary specified not merely because the father has promised that the minor will serve in terms of the contract. In my opinion a minor's contract of marriage is therefore not void for want of consideration as a contract of service by a minor is.

57. Is there no benefit that the minor derives by reason of my holding that such contracts of service are void according to Indian law? Contracts of service like other contracts to be carried out *infuturo* involve a certain element of speculation. It may be that a contract of service by a minor, which is beneficial at the date it is entered into, may by reason of change of circumstances not be beneficial to him at a future date. He may, while the contract is only partly executed, obtain better terms at a future date, and those better terms may be due to the very service he has put in under the first contract. I take it to be the English law that if a contract of service is beneficial to the minor at the date it is entered into, he is not entitled to repudiate it, because of the better terms he may obtain at a future date. In Indian law, the contract being void, he is at liberty to take up service on better terms, even while the first contract remains executory and unfulfilled. I realize that contracts of marriage of minors involve a greater amount of speculation than other contracts. One may go further and say that marriage is a gamble and not a mere matter of speculation. But contracts of marriage have been recognized by a series of decisions now extending over several years as valid, if they are entered into by the guardian for and on behalf of and for the benefit of the minor. For the reasons which I shall presently mention they must be held to be enforceable by the minors personally, even though they are not enforceable against minors.

58. It being conceded that such a contract of marriage is valid, the next question is : is it right in principle that the minor by himself can sue the other party in respect of such a contract without joining the father as a party to the suit. In principle there does not seem to be any objection. The father cannot set aside such a contract as he can set aside a commercial contract at his pleasure nor give the benefit of the contract to another party. The argument that the other party contemplated liability to the father only because he was the party to the contract is also devoid of substance. The principal liability of the other party in such a case is to the minor.

The father's rights are in the nature of a trustee's rights, and they exist only for the benefit of the minors. If, for instance, ornaments and clothes are given by way of gift to the minor in pursuance of such a contract, the father's right to recover the same from the other party, if they are in his possession, is only for the benefit of the minor. So also damages which the father may recover in the case of a breach of contract must be held by the father for the benefit of the minor. If such damages are paid to the father by the other party, the moneys so lying in the hands of the father are not his property, and if he becomes insolvent, they would not vest in the Official Assignee as the assets of the insolvent. Though the father does suffer in his reputation by reason of the breach of contract of marriage, what he contracts for is not for the preservation of his reputation or happiness but for that of the infant. The other party contracts a direct obligation to the minor and undertakes to pay such damages as the minor (and not the father) may sustain. The cause of action then is complete in the minor and it is not necessary that the father should be joined as a party to the action.

59. The case of a contract of service stands on a different footing. So far as contracts of service are concerned, there is no reason why the father should not remit performance of it, if for instance he realizes that it is the minor and not the employer who is at fault. To allow the minor, represented by a next friend in the suit, to sue the employer in such a case would seriously prejudice the employer. But the main ground on which I hold that the contract of service entered into by a father on behalf of the minor is not enforceable, is that it is void for want of consideration. Besides the minor in a contract of service is not seriously prejudiced because, as I have stated before, he can always recover the amount of the salary actually earned by him or he may obtain employment on better terms, or an employment which is more suited to his temperament or natural aptitude.

60. I have carefully considered the expression 'on behalf of and for the benefit of the minor' as used by our Appeal Court and Taraporewala J. in the case of suits by minors for the recovery of damages for breach of contracts of marriages; but I am not prepared to rely on that expression, when I am considering the case of a contract of service, as the deciding factor which should compel me to hold that the minor in the case of such a contract of service is entitled to sue in his own name.

In my opinion the father of the minor in a contract of service does not occupy the position of a trustee within the meaning of the abovementioned decision of the House of Lords in *Les Affreteurs Reunis Societe Anonyme v. Leopold Walford (London) Limited* [1019] A.C. 801 though he does occupy such position in the case of a contract of marriage entered into by him on behalf and for the benefit of the minor.

61. I, therefore, decide issue No. 3 against the plaintiff.

62. July 22, 1948. After I pronounced my judgment on issue No. 3 on July 21, 1948, on coming to Court on July 22, I inquired of counsel whether it was not in the interests of parties that I should try issues Nos. 1 and 2 also. For instance, if on hearing evidence I came to the conclusion that the defendant did not enter into any oral agreement with the plaintiff's father as alleged in para. 1 of the plaint, the suit in my opinion would fail. The suit is not on the footing of a contract entered into by the plaintiff herself with the defendant, though it is the defendant's case that the plaintiff herself entered into the contract with the defendant and that the defendant was not aware of the plaintiff's minority. It is clear that entirely different considerations would apply if the plaintiff had filed this suit on that footing. I am not prepared to allow at this stage to convert the suit into a suit of that nature. Both counsel agreed with me and, thereupon, I decided to try issues Nos. 1 and 2 as preliminary issues along with issue No. 3.

63. If my judgment on issues Nos. 1 and 2 is against the plaintiff and it is held in appeal to be incorrect, the suit may be decided on issue No. 3. If my judgment, on the other hand, on issues Nos. 1 and 2, assuming it to be against the plaintiff, is correct, then a finding on issue No. 3 may be unnecessary.

64. At the request of Mr. C.J. Shah who says his witness on issues Nos. 1 and 2 is not in Court, I adjourn the suit to Monday, July 26, 1948.

65. July 26, 1948. At this stage counsel for the parties state that the suit has been settled.

66. Per Curiam, By consent suit dismissed. Counterclaim dismissed. No order as to costs.

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