APPELLATE CIVIL.

Before Rankin C.J., and Majumdar J.

1927

April 27

SAROJ BASINI DEBI

v.

MAHENDRA NATH BHADURI.*

Lunacy—Inquisition—Nature of inquisition—Procedure—Appeal—Whether sister of one adjudged under Lunacy Act to be a lunatic is entitled to appeal, though she had no notice of initial proceedings—Revision by High Court, if competent—Lunacy Act (IV of 1912), ss. 3 (11), 38(2), 40, 41, 42, 62, 64, 88—Civil Procedure Code (Act V of 1908), s. 115.

When an application is made for directing an inquisition for the purpose of ascertaining whether a person is of unsound mind and incapable of managing himself and his affairs and for passing necessary orders for the management of the estate of the lunatic and for the maintenance of the dependant members of his family, the first thing which has to be done is that the learned Judge, either with notice to the lunatic or without notice, should carefully consider whether the case is one which calls for an order directing an inquisition. An order directing an inquisition into a man's state of mind is a very serious thing and such an order is intended by the Statutes to be a judicial determination carefully made upon adequate materials. If he considers that it calls for an order directing an inquisition, then it is his obvious duty to record an order directing an inquisition. When he has once done that, then the petition is a spent petition, which has served its primary purpose. He is then, by the combined operation of section 64 read with sections 40, 41 and 42 of the Indian Lunacy Act, to take certain steps with regard to notices. Such notice shall be given under section 40 of the Act to the alleged lunatic of the time and place at which it is proposed to hold the inquisition. The notice may be by way of substituted service or it may be served upon any relative of the alleged lunatic or upon any other person in the discretion of the Court. Such a notice is to be drawn up only after there

*Appeal from Original Order, No. 3 of 1927, with Rule No. 98 (M) of 1927, against the order of N. G. A. Edgley, District Judge of 24-Parganas, dated Sep 10. 1926.

has been an order directing an inquisition and is not a notice of the petition.

The inquisition is to be held by the District Judge himself in some cases and in some cases by some subordinate Court nearer to the place where the lunatic happens to be.

Orders for the custody of lunatics and for the management of their estates do not come into question at all until there has been a finding of lunacy as a result of an inquisition. There is no question of *interim* orders on such matters pending the determination as to the person's state of mind.

An inquisition is a proceeding of special solemnity and importance and the learned Judge has to deal with it from the point of view that he is now charged with the duty of looking after the interest of somebody who may be entirely unable to look after his own interest. When an inquisition terminates, it terminates in a judgment which finds or does not find that the person is of unsound mind and upon that finding the jurisdiction arises to give orders as to the custody of the lunatic and to the management of the estate.

Muhammad Yaqub v. *Nazir Ahmad* (1), considered.

The notice contemplated by section 40 of the Indian Lunacy Act is quite different from the notice contemplated by section 11 of the Guardian and Wards Act, and the form of notice provided by the High Court when an application is made under section 11 of the Guardian and Wards Act, and the procedure laid down by Statute for the same are inapplicable for a notice under section 40 of the Indian Lunacy Act.

Mani Lal Sil v. *Nepal Chandra Pal* (2), referred to.

In the lunacy jurisdiction of the High Court, when proceedings under the Indian Lunacy Act are brought to its notice, it has a right and power on its own account to reach out its hand and ensure that this alleged lunatic is dealt with properly according to law.

Quaere : whether a relation of one adjudged under the Indian Lunacy Act to be a lunatic is entitled to appeal, though she had no notice of initial proceedings.

APPEAL FROM ORIGINAL ORDER by Saroj Basini Debi, sister of the alleged lunatic.

On the 28th August, 1926, an application was filed before the District Judge of 24-Parganas by two persons, Mahendra Nath Bhaduri and Brajendra

(1) (1920) I. L. R. 42 All. 504.

(2) (1917) 22 C. W. N. 547.

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Mohan Maitra, sons-in-law of Pyari Mohan Ray, with a prayer for directing an inquisition under the Lunacy Act. The allegations *inter alia* were that the petitioners' father-in-law, Pyari Mohan Ray, was again attacked with insanity from March, 1926, that since then his acts and conduct were such that he had become a source of danger to himself and to the inmates of his house, and that his illness it appeared to be of a serious nature inasmuch as he appeared to be permanently incapacitated in mind and health. Under the circumstances, he was put under restraint and confinement at his residence and was under the medical treatment of Major Hingston. The alleged lunatic was possessed of extensive properties, which he was wasting wantonly. The applicants, therefore, prayed for an enquiry as to the alleged lunacy and for arrangements for the protection of the person of Pyari Mohan and of his properties.

The petition being presented on the 28th August, 1926, Mr. Edgley, the District Judge, fixed a date for hearing and directed the issue of "general notices" and "special notices upon other relatives".

In the said petition, the names and addresses of Pyari Mohan's wife, his two sons and five daughters, his maternal uncle, brother-in-law and uncle-in-law were mentioned as near relatives of the alleged lunatic. There was, however, no mention of his brother and sisters as near relatives.

On the date fixed for hearing, Mr. Edgley recorded the following order:—

"In view of the circumstances set forth in the petition, I direct an "inquisition under the Indian Lunacy Act (IV of 1912). In connection with "the proceedings in the matter, Major Hingston, I.M.S., has been examined "and he has testified to the fact that Pyari Mohan Ray is a dangerous "lunatic and is quite incapable of managing himself and his affairs. He "considers it necessary that the lunatic should be kept under restraint and "thinks it desirable that he should be sent to a lunatic asylum. The case is

"uncontested, and it is agreed by all the parties concerned, that Pyari Mohan "Ray should be sent as soon as possible to the lunatic asylum at Ranchi. "In the circumstances stated above, I find Pyari Mohan is a person of "unsound mind, and is incapable of managing himself and his affairs. I "further direct that he should be sent to the lunatic asylum at Ranchi as "soon as possible and that in the meantime he will be kept in the custody "of his wife Hemlata Debi."

The Judge then gave directions for the management of the lunatic's property.

Thereafter Saroj Basini Debi, a sister of the alleged lunatic and her husband put in a petition before Mr. S. C. Mallik, the then District Judge, praying that the order passed by his predecessor-in-office, Mr. Edgley, in the matter be modified, that Pyari Mohan be sent to the lunatic asylum at Ranchi immediately, as he was being ill-treated by his wife, and that the Court of Wards might be written to take charge of the properties at once.

Subsequently, the said sister of the alleged lunatic and her husband filed an application under section 151 of the Code of Civil Procedure, praying that the order adjudging Pyari Mohan a lunatic, might be reconsidered, and that the order not being in accordance with law might be declared illegal and *ultra vires* and as such might be vacated.

The application under section 151 was rejected on the 6th December, 1926 by Mr. S. C. Mallik.

Thereupon Saroj Basini Debi and her husband preferred this appeal in the High Court against the order of Mr. Edgley, and also filed an application under sections 115 and 151 of the Code of Civil Procedure against the order passed by Mr. S. C. Mallik.

Mr. Narendra Kumar Basu (with him *Babu Bireswar Bagchi*), for the added respondents Hemlata Debi, the wife of the alleged lunatic, and Manoj Mohan Ray, his adult son. I have a preliminary objection as to the competency of the appeal.

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[RANKIN C. J. Let us have the facts first. We shall hear the appellant.]

Mr. Sarat Chandra Roy Chowdhury (with him *Babu Tridib Nath Roy*), for the appellants. The order of Mr. Edgley cannot stand on one ground alone, viz., that no initial inquisition proceeding was directed by the Judge, without which a Judge cannot proceed with a lunacy case. His order clearly shows that he did not at all consider a preliminary inquisition proceeding to be absolutely necessary. He no doubt speaks of directing an inquisition proceeding, but that is meaningless and the interpretation put on it by his successor-in-office, Mr. Mallik, as "directed" is wholly untenable. Moreover, the Judge has not acted according to the provisions of the Act. No notice was served on the present appellants, though they were very near relatives and are persons more interested in the welfare of the lunatic than many of the persons named in the original application. They were clearly persons coming within the meaning of section 40 of the Lunacy Act.

In the next place, the so-called notices given to the alleged lunatic and his relatives other than the present appellants are not notices coming within the purview of the Lunacy Act. Notices meant notices of inquisition.

Lastly, the Judge was wrong in appointing a receiver for the management of the estate, instead of directing the Court of Wards to manage it, as is expressly provided in the Act. See section 68 of the Lunacy Act. The appointment of the receiver is not what the Court had any authority to do under the Act.

Mr. Narendra Kumar Basu, for the added respondents. The appeal is incompetent, for *(i)* the appellants were not parties to the case before the District

Judge; (*ii*) they are not persons aggrieved by the order and (*iii*) *neither the alleged lunatic nor any of his nearest relatives are parties to the appeal*, and my clients have got themselves added as parties long after the period of limitation.

[RANKIN C. J. Can we not interfere under our revisional powers?]

No. Section 115 of the Code expressly limits the exercise of revisional jurisdiction to a case "in which no appeal lies" to the High Court and in this *case*, an appeal is allowed by section 83 of the Lunacy Act. Moreover, the power of revision should certainly not be exercised in the absence of the alleged lunatic, who is of course the person most vitally interested. On the merits, I submit that the order is right. There is no doubt that the application presented on the 28th August, 1926, supported as it was by an affidavit and by three medical certificates from doctors of the eminence of Colonel Denham White, Major Hingston and Sir Frank Connor, was material sufficient to found an inquisition upon. The District Judge, thereupon, issued notices on all concerned and, after examining Major Hingston on oath, passed the order complained of.

At the highest, there has been a technical error in procedure, but that does not vitiate the order. Even if the letter of the law had been strictly followed, the Judge could not have done anything more than what he actually did in carrying on the inquisition. Two independent enquiries are not contemplated by law and no good would have come out of two such enquiries.

Then, the *bonâ fides* of the appellants should also be looked at. In the two petitions they presented before the Judge, they took up inconsistent and contradictory positions. They say in one part that

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Pyari Mohan is a lunatic and ought to be sent to Ranchi at once and, again, in another part, that he is not a lunatic. They are prosecuting the appeal, not in the interests of the alleged lunatic, but for some ulterior purpose of their own.

Mr. Atul Chandra Gupta (with him *Babu Prabodh Nath Sanyal*), for respondents Nos. 1 and 2, the sons-in-law of the alleged lunatic. I adopt the arguments of Mr. Narendra Kumar Basu, but I would add a few words on the question of "procedure" contemplated by the Lunacy Act, which should lead up to an "order directing an inquisition".

See section 62. The word "may" there involves that he "may not". This no doubt means that ordering an inquisition should be the result of judicial consideration of some materials and does not follow as a matter of course, on an application. The view of the Allahabad High Court as expressed in *Muhammad Yaqub* v. *Nazir Ahmad* (1), which is quoted in the judgment of this Court in *Mahamed Manawar Sultan* v. *Shamsunnessa Begum* (2) as to what should constitute this judicial consideration is not sound. The Allahabad High Court lays down, in fact, that there should be a sort of informal inquiry with notice to the alleged lunatic, followed by a regular and formal "inquisition". "Inquisition" etymologically means nothing more than "inquiry". And where the Legislature provides for one "inquiry" it goes perilously near judicial legislation for the courts to lay down the necessity of two—one informal and the other formal, but more or less, of the same kind. It is said by the Allahabad High Court that an inquiry into a man's or woman's state of mind is a painful matter, and, therefore, care

(1) (1920) I. L. R. 42 All. 504. (2) (1923) I. L. R. 51 Calc. 480.

should be taken that it is not undertaken without sufficient reason. This is unexceptionable. But certainly the painfulness of the matter is not lessened by doubling the number of inquiries.

Section 62 of the Lunacy Act, 1912, is taken from the English Lunacy Act, 1890 (53 and 54 Vict. C. 5), s. 90. The English practice does not require the kind of informal enquiry spoken of by the Allahabad High Court. A petition, with two medical affidavits, is what the English practice requires. See Rules in Lunacy, 1892, rules 16 to 18.

In the present case, there were sufficient materials before the Judge in the shape of the affidavit of one of the petitioners, disclosing facts of strength in support of the application in great details, and certificates from three medical men of eminence. The District Judge was quite entitled in law to order an inquisition on these materials without any of the preliminary inquiries.

Cur. adv. vult.

RANKIN C. J. This is an appeal against an order made by the learned District Judge of the 24-Parganas, dated the 10th of September, 1926.

On the 28th of August, 1926, an application was made to the learned District Judge, asking that "your Honour will be pleased to direct an inquisi-"tion for the purpose of ascertaining whether Pyari "Mohan Ray of No. 46, Chakraberia Road, North, "Bhowanipur, district 24-Parganas, is of unsound "mind and incapable of managing himself and his "affairs and pass necessary orders for the manage-"ment of the estate of the lunatic and for the main-"tenance of the dependant members of his family by

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"authorising th Court of Wards to take charge of "the whole estat or otherwise as the Court thinks "just and proper

The application was made by Mahendra Nath Bhaduri and Brajendra Mohan Maitra, being sons-in-law of the alleged lunatic. The unfortunate gentleman, who was the subject of the proceedings is a *zemindar* with considerable properties and is an advocate of this Court. The petition disclosed detailed facts of considerable strength. It would appear from the petition that Pyari Mohan Ray had been attacked with insanity in the year 1918, again in 1922 and that in March, 1926, he had again been suffering from marked mental derangement. Attached to the petition were medical certificates in very clear and definite terms by three medical gentlemen of experience and, indeed, of distinction. In the petition there was careful mention of the names and addresses of the near relatives of the alleged lunatic. No less than eleven persons are specified and their addresses are given. As a matter of fact, the present appellant, who is the married sister of the alleged lunatic, was not included in that list. In these circumstances, I propose to state first what I conceive to be the procedure that should have been adopted by the District Judge under the Indian Lunacy Act of 1912. Having done that, I will then describe the procedure that was actually adopted.

The case is one which comes directly under section 62 of the Act, which says that "the District "Court . . . . may, upon application, by order direct "an inquisition for the purpose of ascertaining whether "such person is of unsound mind and incapable of "managing himself and his affairs". The Statute is silent as to what is to be done by the District Court before passing such an order. In the case of *Mani*

Lal Sil v. *Nepal Chandra Pal* (1), this Court upheld such an order made upon a verified application without any further materials such as medical certificates. In the case of *Muhammad Yaqub* v. *Nazir Ahmad* (2), the learned Judges gave elaborate directions insisting upon the degree of care and caution that has to be employed before such an order should be made. They pointed out that an inquisition once commenced must be prosecuted to the bitter end and that it was a very serious oppression to order an inquisition into the state of mind of a person unless there were solid and substantial materials showing that such a course was really necessary. In a case to which I was myself a party, the decision of the Allahabad Court was referred to and certain observations made therein were approved. It has been suggested in the able argument for the respondents in this case that the directions given by the Allahabad High Court are unnecessarily elaborate. Mr. Gupta has contended that the Statute has directed one enquiry and that it is wrong for the Court by judicial decision to impose the necessity of two. In my judgment, it is clear enough, on the face of the Act, that there are not to be two enquiries of the same character. It is quite true that it is only a preliminary investigation which is required to justify an order directing an inquisition. I do not dissent from the proposition that in a case where there are strong medical certificates it might even be a strong and a rash thing to refuse an inquisition. Whether or not some of the observations made in the Allahabad case, to which I have referred, go too far is a matter upon which there may well be room for consideration. That question does not arise in the present case and I do not propose to prejudice that question by

(1) (1917) 22 C. W. N. 547. (2) (1920) I. L. R. 42 All. 504.

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observations in either direction. Still it is indubitable that an order directing an inquisition into a man's state of mind is a very serious thing and that such an order is intended by the Statute to be a judicial determination carefully made upon adequate materials. I do not understand how it can in general be wise to make such an order without at all events serving some sort of notice upon the lunatic first, and I should think that in this country a certain amount of care and attention in a matter of this sort is in no case thrown away. But the first thing which has to be done upon an application such as was presented in this case is that the learned Judge, either with notice to the lunatic or without notice, should carefully consider whether the case is one which calls for an order directing an inquisition. If he considers that it calls for an order directing an inquisition, then it is his obvious duty to record an order directing an inquisition. When he has once done that, then the petition is a spent petition which has served its primary purpose. When he has once done that, he is then, by the combined operation of section 64 with sections 40, 41 and 42 of the Act, to take certain steps with regard to notices. What is the notice that has to be given under section 40? "Notice shall be given "to the alleged lunatic of the time and place at which "it is proposed to hold the inquisition. If it appears "that a personal service on the alleged lunatic would "be ineffectual the Court may direct such substituted "service of the notice as it thinks fit. The Court may "also direct a copy of such notice to be served upon "any relative of the alleged lunatic or upon any other "person to whom, in the opinion of the Court, notice "of the application should be given". The notice contemplated by section 40 is a notice to be drawn up after there has been an order directing an inquisition

It is notice of such order and of the time and place at which the inquisition is to be held. It is not notice of the petition. When the learned Judge has decided to record an order directing an inquisition he has certain matters to consider. He does not need to record so elaborate an order as is provided for in the case of a High Court by section 38 (*2*) : but there is a provision that, in certain circumstances, the inquisition directed should be held not by the District Judge himself, but by some subordinate Court nearer to the place where the lunatic happens to be : and there are provisions also with regard to assessors and other matters, which the learned District Judge may have occasion to consider at the time when he draws up the order for the inquisition. Under the jurisdiction with which we are concerned, it may be worth while to notice that orders for the custody of lunatics and for the management of their estates do not come into question at all, until there has been a finding of lunacy as a result of an inquisition. There is no question of *interim* orders on such matters pending the determination as to the person's state of mind.

Now an order having been duly made directing an inquisition, the date having arrived and proper notices having been given, the inquisition itself proceeds. The whole thing is bottomed upon the previous order directing an inquisition and if there is no such order, then, in my judgment, the officer purporting to hold the inquisition is not holding an inquisition at all. He is merely a worthy gentleman wasting his own time and other people's. The proceedings in such a case, so far as I can see, have no validity or effect. When the inquisition proceeds, it may be true that the petition which resulted in the order directing the inquisition may be a

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matter upon which the deponent can be cross-examined or other people can be cross-examined: but the evidence taken at the inquisition is evidence to be given by people in the ordinary way coming as witnesses before the Court. It is not a proceeding by which everything on the file is evidence straight away. It is a proceeding of special solemnity and importance, and the learned Judge has to deal with it from the point of view that he is now charged with the duty of looking after the interest of some body who may be entirely unable to look after his own interest. When that inquisition terminates, it terminates in a judgment which finds or does not find that the person is of unsound mind and, upon that finding, the jurisdiction arises to give orders as to the custody of the lunatic and to the management of the estate.

Now, in this case what happened was that a petition having been presented, the order recorded on the 28th of August, 1926, is as follows: "Register. "The 10th September, 1926 is fixed for hearing—" presumably for hearing of the petition or application. "Issue general notices and special upon the other "relatives." I take that to mean issue general notices and special notices upon the relatives other than the applicants. "Applicant to pay process-fee "Rs. 7-8 and supply notices within a week".

Before commenting upon that order, it may be as well to discover what is meant by general and special notices. Notices of what and to whom? We have ascertained from the learned advocates at the bar that the notices which were issued under this order were in a form which is now before me. It is headed "Application for inquisition for the purpose of "ascertaining whether Pyari Mohan Ray is a person "of unsound mind and incapable of managing himself

"and his affairs, as also for orders of the management "of the estate and for the maintenance and custody "of the lunatic and for the maintenance of the "dependent members, etc. The petitioners above- "named having applied for inquisition and other "reliefs in respect of the aforesaid lunatic's person "and properties, the 10th day of September, 1926, has "been fixed for the hearing of the application, and "notice is hereby given, so that if any other relative "friend, kinsman or well-wisher of the aforesaid "lunatic desire to be appointed or declared guardian "of the lunatic or to make any submission relating "thereto, he should enter appearance in person in "this Court on the aforesaid date and be prepared to "adduce on that day any documentary and oral evi- "dence he may desire to adduce in support of his "claim to such appointment or declaration".

When, therefore, we come across the clause "issue "general notices and special upon the other relatives", we have to take that order with the form of the notice that was employed and the first question that the Court has to ask itself is what does all this mean? That this was such a notice as is contemplated by section 40 of the Lunacy Act is clearly an absurd idea. The notice prescribed is a notice that the Court has determined to hold an inquisition. So far as the alleged lunatic is concerned, it is a most important notice. It is a notice which tells him that he is in such a serious position that the Court has determined to enquire into his state of mind and that his liberty and his right to manage his own affairs is now in peril by virtue of a considered judgment of a District Judge. This document is a notice, first, that somebody has applied for an inquisition and secondly, that that application is going to be heard on the 10th of September next. Then it wanders off, telling about relatives,

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friends, kinsmen and well-wishers, who are invited to come in and submit their claim, apparently to be appointed guardian of the lunatic. Some research as to the origin of this form of notice, which is wholly out of place and a complete muddle as regards procedure, has led to the following result. This notice is clearly an adaptation of the form of notice provided by this Court when an application is made for the guardianship of an infant. The form in question is one which is governed by section 11 of the Guardian and Wards Act: and one has only to read section 11 of the Guardian and Wards Act: and the form of notice, Civil Process No. 133, to be found in the second volume of the General Rules and Circular Orders of this Court, page 411, to see that a form of process has been taken from one kind of jurisdiction and applied without any reason at all to another. There is nothing in the Lunacy Act about general notices. There is a definite provision in the Lunacy Act for notice to the lunatic and to such relatives or other persons as the District Judge may think it desirable to give notice to. Under the Guardian and Wards Act, the provision for notice to the minor is a provision about general notice, that is to say, the notice has to be affixed in the Court house and a copy has to be affixed to the permanent place of residence of the minor. In the present case, our information is that the notice to the lunatic and the only notice to him before the date on which he was adjudicated to be of unsound mind, was the notice which I have already read which was affixed to the alleged lunatic's residence, apparently by way of analogy to section 11 of the Guardian and Wards Act. I have some sympathy with learned District Judges and with their *peshkars* in respect of the fact that it does not appear that any proper set of forms has been

provided for their use in connection with lunacy proceedings: and I have no desire to be disrespectful or unduly critical when I say that it is beyond all question that the procedure adopted in this case is entirely misconceived. Now, general notices and special having been ordered and having been issued, on the day appointed, certain relations put in what the learned Judge calls a petition of consent, that is to say, they put in a petition whereby they stated that they quite agreed that this poor gentleman was of unsound mind and was incapable of managing his own affairs. Thereupon, the learned Judge took evidence—a medical gentleman was called who gave evidence—and the learned Judge, having regard to the attitude adopted by so many relatives and to the medical certificates and so forth, recorded his order. He started off not by saying that on such and such a day, by an order duly made, it was directed that an inquisition was to be held into the state of mind of Pyari Mohan Ray: he started off by referring to the petition. Having referred to the petition, he says, "In view of the circumstances set forth in the petition "I direct an inquisition under the Indian Lunacy Act "(IV of 1912). In connection with the proceed- "ings in this matter Major Hingston, I.M.S., has been "examined and he has testified to the fact that Pyari "Mohan Ray is a dangerous lunatic and is quite "incapable of managing himself and his affairs. He "considers it necessary that the lunatic should be "kept in restraint and thinks it desirable that he "should be sent to a lunatic asylum.

"The case is uncontested and it is agreed by all the "parties concerned that Pyari Mohan Ray should be "sent as soon as possible to the Lunatic Asylum at "Ranchi. In the circumstances stated above, I find "that Pyari Mohan is a person of unsound mind

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"and is incapable of managing himself and his affairs".

With great respect to the learned Judge, at the end of the evidence and of the proceedings, he was a little late to direct the inquisition. Indeed so paradoxical is this that the learned Judge's successor suggested that there has been some slip of the pen and that the word "direct" should be "directed". Unfortunately it is quite impossible to take that view. I do not think that the learned Judge had sufficiently considered what an inquisition is, but it is quite certain that if an inquisition is to be directed at all, it must be directed before it is held and that unless there is a good direction for an inquisition no person can even begin to hold one. Accordingly, the contention with which we have to deal in this case is narrowed down to this. Whether the order of the 28th August, 1926, can by some benevolent construction be deemed to be an informal order directing an inquisition. In my opinion, there is no way of giving validity to these proceedings after that fashion. The order of the 10th of September shows, to my mind, quite clearly that at the time when the petition was first ordered to be registered there was no intention of coming to an *ex parte* conclusion as to the necessity of holding an inquisition. The fact is that the learned Judge had mistaken the nature of his duty and from the first had issued orders about notices under the impression that the matter was one to be dealt with more or less as an ordinary suit, namely, notices should be given to the parties and the application should be considered in their presence.

The result is, in my judgment, that the proceedings adopted by the learned Judge are entirely bad. There has been, prior to the proceedings, no order directing an inquisition and there has been no notice served

upon the lunatic of a decision on the part of the Court to make him the subject of lunacy proceedings.

In these circumstances, there would be little doubt about the duty of this Court, were it not for the fact that something remains to be considered with reference to the present appellant, the sister of the alleged lunatic. The sister of the alleged lunatic was not included in the petition as a relative to whom notice ought to go. There is no right on the part of a relative in such a case as this, to get any notice at all. The matter is entirely in the discretion of the Court and the Court may omit a relative and may include a person who is not a relative. But it is noticeable and unfortunate that this gentleman's sister is not included in a rather lengthy list of relatives. When the alleged inquisition was being held, all the parties were of one mind. So there was no person there who in fact was opposing the making of the order. Whether it is really credible that all these proceedings took place without the sister's knowing anything at all, is a matter which may be said to be extremely doubtful, at all events if the lady was taking any particular interest in her brother. However, after the order had been made, the lady and her husband made an application to the successor of the learned Judge to set aside the finding as to lunacy and the incidental proceedings. The learned Judge had made an order to the effect that until the lunatic was sent to Ranchi Asylum he should be kept in the custody of his wife and, as regards the management of his property, it appears that there was a manager already employed to manage the lunatic's property. He directed that after a short time this manager should give way to a certain Babu Sudhindra Nath Mukherjee whom he appointed receiver. The vakil for the applicant said that he would file an application asking that the Court of

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Wards might be authorised to take charge of the estate and the order made was: "The arrangements "mentioned above will continue until orders are passed "with reference to that application, if and when filed".

Now, the sister took up a very curious position. She professed to be doubtful whether her brother was really a lunatic at all and in her petition she made a deplorable and abusive attack upon the alleged lunatic's wife and introduced prejudicial matters upon other topics. This makes one doubt whether her proceedings are really actuated by an opinion that they are necessary in her brother's interest.

The learned Judge who heard her application expressed his doubt as to its *bonâ fides* and some complaint has been made on her behalf that this expression of opinion is unmerited and uncalled for. So far from thinking that it is unmerited and uncalled for, I think her application and her action in this matter deserve all that the learned Judge has said about her.

Now, in these circumstances, the Court has before it an appeal by this lady from the order adjudicating Pyari Mohan Ray a lunatic. It also has before it a Rule obtained by her asking in effect that if the finding of insanity is maintained, the lunatic should be sent at once to Ranchi and that somebody else should be appointed receiver and that the Court of Wards should take charge of his property. As I have said, the facts brought to our notice, in my opinion, show that the proceedings in the district Court have been entirely erroneous and improper. If, therefore, this lady has a right of appeal, her motive would matter little to this Court, because this Court is concerned with the interest of the lunatic. The question whether she has a right of appeal is not an easy one. By section 83 of the Act it is said "an appeal shall lie "to the High Court from any order made by a District

"Court, under this Chapter". That is the first thing. There can be no doubt that the lady is a person who would have been competent to apply for an inquisition, because she is a "relative" within the definition given by clause (11) of section 3. That matter was considered in a case which I have already referred to, namely, the case of *Mani Lal Sil* v. *Nepal Chandra Pal* (1). She is also a person who comes within the first part of the 3rd clause of section 40. "The Court may also direct a copy of such notice to "be served upon any relative of the alleged lunatic": and there can be no doubt that had her name been included with the other names in the application she too would have got notice. Under exactly the same statutory provisions of the Act (Act XXXV of 1858), this Court held that a relative who had received a notice and taken part in the proceedings was entitled to appeal. The question whether a relative who had not received a notice was entitled to appeal was not before the Court, though there are some expressions in the judgment which favour the view that a relative, even in such circumstances, may be entitled. There can be no doubt that it is somewhat paradoxical to say that the sister of a person found, by an improper set of proceedings, purporting to be an inquisition, to be a lunatic, has no grievance recognised by the law. I think it would be paradoxical in such a case as this, if this Court upon the application of the sister felt obliged to say, in spite of the character of the proceedings in the Court below, that it was unable to interfere. It appears to me that there are probably two logical lines and two only: One is to hold that the only appellants from such an order would be the applicant and the alleged lunatic either by a next friend or otherwise: or to hold that any person who

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is a relative and has a right to see that the alleged lunatic's estate and liberty are dealt with according to law has a right of appeal. I go further than that. It does seem to me that, in the lunacy jurisdiction, this Court, when proceedings of the character I have endeavoured to describe are brought to its notice, has a right and power on its own account to reach out its hand and ensure that this alleged lunatic is dealt with properly according to law.

It is said that if there is an appeal provided from an order, even although it is an appeal restricted to certain persons, this Court has no right of revision under section 115 of the Code of Civil Procedure. I doubt that extremely, and I think that in this jurisdiction it cannot but be right to say that this Court has a power on its own account to see that a person improperly dealt with as an alleged lunatic is dealt with properly and according to law. My own view is that, taking the Statute as it stands, the sister has a right to appeal on the ground that she is a near relative and a person who has the right to insist upon her brother and his affairs being properly dealt with. But even if that be wrong, I am of opinion that the sister may be put aside altogether and with this record before us we have a right to interfere. Accordingly, in my judgment, the correct form of order is this: I think this appeal should be allowed. I think an order must be made to the effect that all the proceedings of the District Court from the moment this application was received on the 28th of August, 1926, be set aside and that the Court be directed to take up that application from the very beginning and to deal with it according to law. I want to make it particularly clear that if this matter is dealt with again, the fact that the application was made in August, 1926, will not prevent its being the duty of

the District Judge to ascertain whether at the time of this new inquisition—if an inquisition be ordered—whether at this latest time the alleged lunatic is or is not of unsound mind. The date of the presentation of the petition has nothing to do with that. The matter will have to be examined afresh and at the time when it is examined the question is, aye or no,—is this unfortunate gentleman of unsound mind? I would point out further that one of the reasons why this case is being remanded is that the learned Judge may first of all make a proper order, after taking such steps as he thinks necessary, and serving such notices, as in his discretion he thinks necessary, directing or refusing an inquisition. Having made that order, he will then direct notices to be given under the Lunacy Act, forgetting—if it is possible for him to forget—that such things exist as the Guardian and Wards Act or the procedure prescribed by section 11 thereof. I do not think that there should be any order for costs of this appeal. It will be in the discretion of the learned District Judge, when the matter goes back to him, to award or refuse costs to the petitioners before him of the abortive proceedings, as well as of the fresh proceedings, if the alleged lunatic is found to be of unsound mind. No order is made on the Rule save that it be discharged.

MAJUMDAR J. I agree.

Appeal allowed.

S. M.