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limitation subsequent to the payment, there is nothing in our opinion to prevent the Judge from dealing with the application, because, under s. 228, "the Court executing the decree sent to it under this chapter, shall have the same power in executing such decree as if it had been passed by itself."

On this ground, therefore, we reverse the order of the Judge of Rajshahye, and direct him to take up the application and deal with it as required by law. Costs to abide the result.

Appeal allowed.

Before Mr. Justice Morris and Mr. Justice Prinsep.

1879
 Dec. 5.

MRINAMOYI DABIA, ON BEHALF OF SHIBCHAND CHUCKERBUTTY
 (OBJECTOR) v. JOGODISHURI DABIA (APPLICANT FOR PROBATE).*

Probate—Insufficient Appearance on behalf of Infant—Succession Act, s. 261—Act X of 1877, Chap. xxxi—Act XL of 1858, s. 3.

No judgment or order passed in a suit, to which a minor subject to the provisions of Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate, or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor, under s. 3 of Act XL of 1858, should be formally placed on the record.

Chap. xxxi of the Civil Procedure Code lays down the form in which a minor should appear as a party, and this form should be strictly followed.

THIS was an application for probate of the will of one Doyamoyi Dabia, made on the 7th September 1877 by one Bholanath Surma Khan, the executor under the will. Previous to any order being passed upon this application, the sole legatee under the will, one Promothonath Sandyal, died a minor. Thereupon, one Jogodishuri Dabia, mother of the testatrix, applied for and obtained probate of the will; Bholanath Khan consenting to the application.

On the 8th January 1878, one Khetternath Chuckerbutty, who styled himself in his petition as 'the father and guardian

* Miscellaneous Appeal, No. 137 of 1878, from the decision of J. Tweedie, Esq., Officiating Judge of Rajshahye, dated 15th February 1878.

of Shibchand Chuckerbutty, minor,' applied for revocation of the grant of probate made to Jogodishuri, on the grounds, that his son Shibchand, the cousin of Promothonath, was the next heir, and, therefore, entitled to probate, and on the further ground, that the will was a forgery.

The case was, therefore, ordered to be set down as a regular suit between Jogodishuri Dabia, as petitioner, and Khetternath Chuckerbutty, as objector. On the case coming on for hearing, the Judge having found the questions raised by Khetternath were questions which could only be raised in a civil suit, and that, therefore, the objector had no *locus standi* in the proceedings then before the Court, dismissed the suit with costs.

Subsequent to this order Khetternath died, and, on an *ex parte* application, Mrinamoyi Dabia, his widow, was allowed to prosecute any further proceedings in the suit. She, therefore, on behalf of her infant son Shibchand, appealed to the High Court.

Baboo *Kishory Mohun Roy* for the appellant.

Mr. *P. O'Kinealy* for the respondent raised a preliminary objection to the appeal being heard. Section 261 of the Succession Act lays down the procedure in contentious cases. In this case, Shibchand was not on the record in the Court below, the objector there was Khetternath, who is simply styled 'father and guardian of Shibchand Chuckerbutty, minor.' Such an appearance cannot be said to be an appearance on behalf of the minor, but must be taken as an appearance by the father alone; the words 'father and guardian,' &c., being mere words of description. Moreover, the father has obtained no certificate of guardianship under Act XL of 1858. Proceedings exactly similar to these have been held not to be binding upon a minor—*Sreenath Koondoo v. Huree Narain Mudduck* (1). Chap. xxxi of Act X of 1877 clearly lays down how appearances are to be made on behalf of minors and others; this section has not been followed.

Baboo *Kishory Mohun Roy* for the appellant.—Khetternath is dead, and his widow was allowed to prosecute the suit on behalf of her minor son. The objection taken cannot be raised

(1) 7 W. R., 399.

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for the first time now under s. 261 of Act X of 1865; the respondent must file a cross-appeal, and must give seven days' notice of his intention to do so. [MORRIS, J.—There are two cases in your favor—in which plaints have been admitted by Munsifs where no certificate of guardianship has been taken out—*Goono Monee Debia v. Ram Kumol Sandle* (1), *Aukhil Chunder v. Tripoora Soonduree* (2)].

Mr. P. O'Kinealy in reply.—In *Goono Monee Debia v. Ram Kumol Sandle* (1) the Court exercised the discretion which is given in s. 3 of the Minors Act. *Ram Chunder Chuckerbutty v. Brojonath Mozumdar* (3) lays down, that a person defending or bringing a suit on behalf of a minor must obtain a certificate, unless the Court for some sufficient reason allow him to proceed without one. It must, however, appear on the record how such discretion was exercised; for if it is exercised wrongfully, the point is appealable—*Sitaram Bhat v. Sitaram Ganesh* (4). In the present case, it would be impossible for the Court to find out whether discretion has been properly exercised, as there is nothing on the record to show that the discretion has been exercised at all. A minor, when sued, should be made a defendant, and be so described, some other person being named as his guardian—*Mongula Dossee v. Sharoda Dossee* (5). *Madho Rao Apa v. Thakoor Pershad* (6) lays down, that a father cannot sue on behalf of his minor son without a certificate, unless leave be obtained for him so to do. Leave was not obtained in this case.

The judgment of the Court (MORRIS and PRINSEP, JJ.) was delivered by

MORRIS, J.—The preliminary objection taken, that this appeal cannot proceed, must, we think, prevail. The minor, whom the appellant Mrinamoyi represents in the appeal, was not a party, as the law requires, to the proceedings in the Court below,

(1) 17 W. R., 144.

(2) 22 W. R., 525.

(3) 4 C. L. R., 247, 253.

(4) 6 Bom. H. C., 250.

(5) 20 W. R., 48.

(6) 4 Agra Rep., 1868, p. 627.

nor can he be affected by these proceedings. The application for revocation of the probate, applied for by Jogodishuri, was made by Khetternath, who styled himself 'father and guardian of the minor Shibchand.' There is nothing in the record to show, and so far as the Court is aware, Khetternath had obtained no certificate under Act XL of 1858, nor had he permission granted by the Court, under the special circumstances specified in s. 3 of that Act, to represent the minor as objector in the probate proceedings. It is contended, that it may be presumed, that the Court gave the necessary permission under s. 3 to represent the minor; but we think that this permission must be formally recorded by the Court as it is an act of judicial discretion which is necessarily open to appeal. This view appears to us to be supported by various rulings of this Court, and of the Allahabad and Bombay High Courts. Chapter xxxi of the present Civil Procedure Code, which is applicable to this case, lays down a form in which a minor should appear as a party in a suit, and this form must be strictly followed. Any neglect of it may be attended with serious consequences as it may be that at a subsequent period the minor may repudiate the acts of his self-elected guardian, and decline to be bound by the proceedings taken improperly on his behalf. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

ADMIRALTY JURISDICTION.

Before Mr. Justice Wilson.

IN RE "THE AVA" AND "THE BRENHILDA."
GOVERNMENT OF BENGAL v. THOMAS W. WHITTARD AND
ANOTHER.

1879
July 28.

Jurisdiction—Admiralty Courts—Certificates—Cancellation of Certificate—Statement of Grounds—Incompetency or Misconduct—Board of Trade—Local Government—Act IV of 1875, ss. 2, 3, 5, 14, 25.

The powers conferred on Courts of Admiralty by s. 5 of Act IV of 1875, of investigating charges of incompetency or misconduct, against the holders of

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