

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

CHAKRAPANI (COUNTER-PETITIONER No. 1), PETITIONER,

v.

VARAHALAMMA (PETITIONER), RESPONDENT.*

1894,
August 7

Scheduled Districts Act—Act XIV of 1874—Guardian and Wards Act—Act VIII of 1890, s. 1, cl. (2)—Scheduled District—Agency Rules.

A petition of appeal was presented to the Governor in Council against an *ex-parte* order made under the Guardian and Wards Act, 1890, by the Agent to the Governor in the scheduled district of Vizagapatam, the ground of the petition being that the petitioner's vakil had not been heard. The appeal was referred to the High Court:

Held, (1) that the Guardian and Wards Act, 1890, is in force in the Agency Tracts, although no notification to that effect had been made under the Scheduled Districts Act;

(2) that the High Court had jurisdiction to set aside the *ex-parte* order.

PETITION referred to the High Court under rule XXXI made under Act XXIV of 1839.

The Agent to the Governor in the Vizagapatam district, purporting to act under Guardian and Wards Act, 1890, appointed a woman to be a guardian of the person and property of an infant. The natural father of the infant, in whose possession the property was, objected to the appointment on various grounds, but he was ill and did not appear when the appointment was made. A subsequent application to have the order of appointment set aside as having been made *ex-parte* was rejected. The natural father appealed to the Governor in Council complaining that his pleader had not been heard and the petition of appeal was referred to the High Court as above.

The Agency Tract of Vizagapatam is a district scheduled under Act XIV of 1874, and no notification had been under that Act extending the operation of the Guardian and Wards Act, 1890, to that district.

Mr. J. G. Kernan for petitioner.

Seshagiri Ayyar for respondent.

JUDGMENT.—It is urged on behalf of petitioner that the Guardian and Wards Act is not applicable to the scheduled district

* Civil Miscellaneous Petition No. 565 of 1893.

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in the absence of a notification under section 5 of Act XIV of 1874. We find, however, that the Act VIII of 1890 extends to the whole of British India (see section 1, clause 2). Therefore no notification under Act XIV of 1874 is necessary.

It is urged, on the other hand, on behalf of counter-petitioner that, under Act VIII of 1890, section 47, the appeal lies directly to this Court, and that, therefore, the petition was wrongly presented to Government in the first instance; but we observe that the order appealed from is not that of a 'District Court' but of the Governor's Agent, and therefore we derive our jurisdiction not directly from Act VIII of 1890, but by the reference made by Government under Rule XXXI of the Agency Rules passed under Act XXIV of 1839. We are also not prepared to attach weight to the objection that it was not competent to Government to refer to us a petition such as the present, which is an application to set aside an *ex-parte* order as to which no appeal is provided in the Act. Section 48 of the Act allows us to interfere under section 622 of the Code of Civil Procedure and we observe that, in the present case, the order in question was passed without hearing the petitioner's vakil. The vakil should have been heard before disposing of the petition.

We set aside the order and remand the case for disposal afresh in accordance with law after hearing the petitioner's vakil.

The costs hitherto incurred will abide and follow the result.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

QUEEN-EMPRESS,

v.

ANDI.*

**Railways Act—Act IX of 1890, s. 125—Permitting a Cattle to stray upon a railway—
Discretion of Magistrate.*

When the owner of cattle which have been allowed to stray upon a railway, is prosecuted under Railway Act, 1890, section 125 (1), the Magistrate is bound to ascertain whether the person charged was himself guilty.