

ORIGINAL CIVIL.

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice
Cunningham.*

G. STEPHEN (ONE OF THE DEFENDANTS) v. O. N. STEPHEN (PLAINTIFF).

1883
March 3.

*Act XL of 1858, s. 3—Minor—Certificate of Administration—Majority—
Majority Act (IX of 1875,) s. 3.*

A certificate of guardianship under Act XL of 1858 takes effect not from the date when it is applied for, nor when an order granting it is passed, but from the date when it is actually issued. Therefore where an application for a certificate was made in 1877, and an order granting it was passed in December 1879, but the certificate was not issued until December 1881, *Held*, that the minor, in respect of whose property the certificate was applied for, who had between the date of the application and the issue of the certificate attained the age of 18 years, and signed a promissory note, was not entitled to take advantage of s. 3 of the Majority Act 1875, and set up the plea of minority as a defence to a suit on the note.

THIS was an appeal from a decision of Wilson, J., dated the 28th of March 1882. The suit was brought to recover the amount due on a promissory note executed on the 27th October 1880 by the appellant, together with two other persons. The appellant was born on the 7th of April 1861. In 1877 his father applied to the Dacca Court for a certificate of administration to his property, under s. 3 of Act XL of 1858. On the 10th December 1879 the Judge made an order granting the certificate; but it was not issued until the 10th of December 1881 which was the date it bore.

The only question in this appeal was whether the plaintiff was or was not a minor at the time he executed the note. Wilson, J., held that he was not then a minor. The judgment is reported in I. L. R., 8 Calc., 714.

Mr. T. A. Apcar for the appellant. The decision of this question depends on the date from which a certificate granted under Act XL of 1858 takes effect. If it can be said to take effect from the date it is applied for, the appellant, instead of attaining his majority at 18, would come under the provisions of s. 3 of the Majority Act 1875, and would be a minor until he was 21; but if it only has effect from the date of the order granting it, or from the date it

1888

STEPHEN
v.
STEPHEN.

is issued, then the appellant was no doubt of age when this note was signed. The learned Judge in the Court below seems to have been under the impression that the appellant attained the age of 18 years between the date of the order granting the certificate and its actual issue, but that was not so; he attained the age of 18 years before the order granting the certificate. My contention is, however, that the certificate when granted is to be taken as dating back to the time of the application for it, as being the time at which the applicant may be said to have a right to it. Pending the application, therefore, it is submitted he would remain a minor for all purposes. The case of *Chunee Mul Johary v. Brojo Nath Roy Chowdhry* (1), was referred to.

Mr. *Trevelyan* for the respondent contended, that the mere fact that an application for a certificate was pending could not alter the period at which the minor would attain majority. The appellant ceased to be a minor when he attained 18, and after that the issue of a certificate would not be of any effect so as to make the Majority Act applicable to him, and so alter his status from one of majority to one of minority. The case of *Monsoor Ali v. Ramdyal* (2) was referred to as to the effect of s. 26 of Act XL of 1858, and also *Wilberforce on Statutes* 48, and *Maxwell on Statutes* 73, to show that express words would be needed to take away vested rights.

Mr. *Apear* in reply.

The judgment of the Court (GARTH, C.J., and CUNNINGHAM, J.) was delivered by

GARTH, C.J.—The defendant No. 3 is the sole appellant in this case, and the only ground of appeal is, that at the time when the promissory note was given he, the defendant No. 3, was a minor.

The facts were these: The defendant No. 1 is the father of the defendant No. 3, and it appears that in September 1877, before the defendant No. 3 had attained the age of 18 years, the defendant No. 1 petitioned the District Judge of Dacca for a certificate of administration (under s. 3 of the Minor's Act XL of 1858) to the property of the defendant No. 3.

(1) I. L. R., 8 Calc., 967.

(2) 3 W. R., 50.

On the 10th of December 1879 the Judge made an order for a certificate of administration under that Act, and on the 10th December 1881 the certificate was issued.

1883
STEPHEN
v.
STEPHEN.

But meanwhile, between September 1877 and the 10th of December 1879, when the Judge made the order, the defendant No. 3 had attained the age of 18 years; and the note in question was given on the 27th of October 1880, before the certificate was issued.

In this state of things the learned Judge in the Court below has held that the defendant No. 3 could not avail himself of the defence of minority; and I think he was right.

Section 3 of Act XL of 1858 enables any person who claims a right to have charge of the property of a minor under a will or deed to apply to the Civil Court for a certificate of administration. Section 11 provides that, "whenever a Court shall grant a certificate of administration to the estate of a minor, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor;" and s. 18 further provides that "every person to whom a certificate shall have been granted under the provisions of this Act, may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor."

Then by s. 3 of the Indian Majority Act IX of 1875, it is enacted that "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice shall be deemed to have attained his majority when he shall have completed his age of 21 years and not before."

The question is, whether by the combined operation of the provisions of these two Acts, the defendant No. 3, at the time when he signed the note in question, was under the disability of minority.

In my opinion he was not.

In the first place I think that until the certificate has been actually issued the estate of the minor does not vest in the person who obtains the certificate, and if after the time when the minor comes of age, that is to say, attains the age of 18 years, and before the certificate is granted he enters into any contract, I consider that he is bound by such contract whether the certificate had been previously applied for or not.

1883

STEPHEN
v.
STEPHEN.

If this were not so, it seems to me that persons dealing with the minor after he had attained his full age would be placed in a most unfair position.

Suppose a certificate to be applied for on the 1st of January 1880, and that before the application is heard, say on the 1st February following, the minor attains his full age of 18. He enters upon the possession and management of his property, sells portions of it to *bond fide* purchasers, mortgages other portions, and has various dealings with various people who know perfectly well that he is of age, and have every reason to believe that they are at liberty to contract with him.

For some reason or other the application is not heard or the certificate granted (as in this case) for a year afterwards. Are all the minor's sales and other dealings to be avoided at his option or that of his guardian? It seems to me, that if that were the law, it would give rise to much injustice, and might frequently be made an instrument of fraud.

When a minor comes of age, and is entitled by law to take possession of and manage his property, the public have a right to deal and contract with him, and I see no reason why those contracts and dealings should be avoided, merely because the Court may afterwards appoint a guardian of his person or property.

Moreover I very much doubt whether the provisions of s. 3 of Act IX of 1875 were ever intended to apply to those cases, where a minor has actually attained his majority, before any certificate under Act XL has been granted. I think the language of the Act shews, that it is only intended to apply in cases where the person and property of the minor have been placed under the care of a guardian before he has attained his full age. If he has once attained that age, I am disposed to think that the provisions of the Act are not intended to have a retrospective effect, and to restore a person to the status of a minor, who has once attained his majority.

I, therefore, agree with the learned Judge of the Court below and consider that this appeal should be dismissed with costs on scale 2.

Appeal dismissed.

Attorney for the Appellant: Mr. Hume.

Attorney for the Respondent: Baboo O. C. Gangooly.