is advanced that an amendment does not bear the same relation to the order as a decree bears to the judgment and that therefore the provision in the Civil Procedure Code which says that the decree shall bear the date of the judgment is not applicable here. As a matter of fact, an order of amendment is itself a judgment and, in accordance therewith, the original decree is altered, and becomes a new and amended decree in accordance with the judgment pronounced. It seems therefore, clear that the date of the amended decree must be the same as that of the judgment. To hold otherwise would be to put in the hands of the ministerial officers of the Court the power to fix any date for the amendment of the decree quite regardless of the date on which the order was passed. The same view was taken in *Nirit Lal Jha* v. *Kalanand Singh*(1) and we see no reason to hold otherwise.

The appeal is accordingly dismissed with costs.

K.R.

ORIGINAL SIDE—FULL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice*, *Mr. Justice Krishnan and Mr. Justice Beasley.*

IN THE MATTER OF NATHA VENKATESA PERUMAL *alias* YELCHURI SRI RAMULU CHETTY, a minor.

1925, October 19.

Sec. 3, Indian Majority Act (IX of 1875), ss. 7 (ii) and 34 of Guardians and Wards Act (VIII of 1890)—Order appointing guardian conditional on giving security, validity of—Effect of such order on age of majority.

If a person is appointed under the Guardian and Wards Act as guardian of the person or property of a minor,

(1) (1916) 36 I.C., 533.

* O.P. No. 212 of 1924.

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conditional on his furnishing security, and fails to furnish the security, then there is no appointment of a guardian within the meaning of section 3 of the Indian Majority Act and such minor attains majority when he completes 18. Such a conditional order under the Act is invalid. Judgment of SADASIVA AYYAR, J., in *Gopammal* v. *Srinivasa Ayyangar*, (1916) 30 M.L.J., 508, followed. *Subba Naik* v. *Rama Ayyar*, (1917) I.L.R., 40 Mad., 775, overruled.

CASE referred to a Full Bench in O.P. No. 212 of 1924, on the file of the High Court, at the instance of SRINIVASA AYYANGAR, J.

The facts are given in the judgment.

V. Radhakrishnayya for the plaintiff.—As the order appointing the guardian was expressly conditional on his giving security, the guardian cannot be deemed to have been appointed within the meaning of section 3 of the Indian Majority Act unless and until security is given.

[CHIEF JUSTICE.—Under section 34 of the Guardians and Wards Act, no security can be ordered until a guardian has actually been appointed; and outside section 34 there is no power to order security.]

Under section 50 of the Guardians and Wards Act under which the High Court has framed rules, the appointment may be conditional; see rules 240 and 241 and Forms 92, 93 and 94 of the Civil Rules of Practice.

[CHIEF JUSTICE.—These rules and forms presuppose the existence of an already appointed guardian.]

Though in *Gopammal* v. *Srinivasa Ayyangar*(1) SADASIVA AYYAR, J., held that security can be demanded only from a guardian already appointed, MOORE, J., held otherwise. Justice SADASIVA AYYAR'S view is dissented from in *Subba Naik* v. *Rama Ayyar*(2). *Gopal Chunder Bose* v. *Gonesh Chunder Srimani*(3) is against me. Even if a conditional order is not valid under the Guardians and Wards Act such an order may be valid under the Letters Patent of the High Court. In the analogous case of Receivers conditional orders have been held to be good: see *Edwards* v. *Edwards*(4).

None appeared for the respondent.

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(1) (1916) 30 M.L.J., 508.
(2) (1917) I.L.R., 40 Mad., 775.
(3) (1905) 4 C.L.J., 112.
(4) (1876) 2 Ch. D, 291.

The JUDGMENT of the Court was delivered by

COUTTS TROTTER, C.J.—This is a matter which has been put before a Bench on the suggestion of the learned trial Judge, SRINIVASA AYYANGAR, J., because it raises a question of some difficulty and some conflict of authorities. The facts are these. There was a minor called Natha Venkatesa Perumal Chetty. On the 20th November 1924 an order was made by WALLER, J., in Chambers conditionally appointing the natural father of the boy as his guardian under the Guardians and Wards Act. Part of the order was that the father was to furnish certain security. He did not do so and he died in the following July without having furnished any security at all in compliance with the condition contained in the order. On the 15th of August 1925 the minor became 18 years old. The question we have to determine is whether, having regard to the events that happened and to the terms of the order of WALLER, J., the minor is to be regarded as subject to the longer term of minority ending at 21 provided by the Indian Majority Act or is to be regarded as having in August attained his majority, when he completed his 18th year. We will first refer to the relevant statutory provisions. Section 3 of the Indian Majority Act (IX of 1875) runs as follows:—

> "Every minor of whose person or property or both a guardian . . . has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of 18 years . . . shall, notwithstanding anything contained in the Indian Succession Act (X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before."

The question, therefore, raised by that Act is whether there has been appointed or declared by a Court of Justice such a guardian in which case his majority

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automatically on the making of the order is prolonged to the age of 21. We therefore turn to the Guardians and Wards Act (VIII of 1890) to see what its provisions are with regard to the appointment of guardians. By section 7 (1)

> "Where the Court is satisfied that it is for the welfare of a minor that an order should be made (*a*) appointing a guardian of his person or property, or both, or (*b*) declaring a person to be such a guardian, the Court may make an order accordingly."

Then finally by section 34, it is provided as follows:—

> "Where a guardian of the property of a ward has been appointed or declared by the Court . . . he shall (*a*) if so required by the Court, give a bond as nearly as may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward."

The short point here is this: Was the conditional order which was made in this case *intra vires* of the statute under which the appointment is made. A suggestion is made that the only power given under section 34 is to impose the duty of finding security and executing a bond on the person who is before the Court in the capacity of an appointed guardian. If that be so, there would be no power to impose such a condition upon a person who is merely an aspirant to the office of guardian before the Court actually appoints him. There are two different opinions in this Court on the subject; one is the opinion of SADASIVA AYYAR, J., contained in *Gopammal* v. *Srinivasa Ayyangar*(1) in which he expressed the opinion that these suspensory conditions are not warranted by the words of the section, and that the mufassal rules, the Civil Rules of Practice, which appear to validate them are thus *ultra vires* under the Act. In

(1) (1916) 30 M.L.J., 508.

our opinion, that view is the correct one and the later opinion expressed by a Bench of this Court consisting of AYLING and SESHAGIRI AYYAR, JJ., reported in *Subba Naik* v. *Rama Ayyar*(1) to the contrary is incorrect. If this be so, the sole question that arises is this: Was this order wholly bad or can we sever the valid from the invalid? On that it seems to us that, if the learned Judge had as it were definitely made an appointment but merely hampered it with a condition warranted by the Act, that would be one thing and this Court might be able to say that the part creating the guardian was positive and effectual and reject the rest demanding the security. That seems to have been the view adopted by STEPHEN, J., in *Gopal Chunder Bose* v. *Gonesh Chunder Srimani*(2). Apparently that view has not been accepted in later cases by other Judges in Calcutta. The matter, we think, turns upon the actual wording of the order: and that wording is this:

> "That upon Lakshminarasimhulu Chetty, the petitioner herein, furnishing security to the satisfaction of the Registrar of this Court for a sum of Rs. 5,000 only, he be, and hereby is, appointed guardian of the property of the said minor during his minority or until the further order of this Court."

It seems to us impossible to say that the learned Judge who passed that order could have meant to do otherwise than make the actual appointment of the guardian coming into force, dependent upon a prior furnishing of the security. Therefore, if this order is bad, we think it is bad *in toto*. No practical difficulty will, as we conceive it, arise, as we think it can very easily be met by adopting a different form of procedure. The mischief of these suspensory orders, apart altogether from the question as to whether they are legal or invalid,

(1) (1917) I.L.R., 40 Mad., 775. (2) (1903) 4 C.L.J., 112.

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is that the matter goes before the Judge who makes these suspensory orders and then the papers go into the office where it is nobody's business to see what is being done about it. The order is not complied with, and then somebody finds out that the minor, whom it was desired to protect, has attained his majority, and the Court is powerless because the guardian has failed to carry out its directions and the Court has kept no control over the matter by reason of the nature of the order so as to summon the guardian and ask him "Why have you not furnished the security?". The remedy seems to us to be quite simple. Let the learned Judge, before he makes the appointment of a guardian, if he is satisfied that it is a proper case for the minor to have a guardian in charge of his property and of his affairs, make enquiries about the proposed guardian and satisfy himself fully whether, if appointed, he will be in a position and will be willing to execute a bond to the amount that the learned Judge thinks that the use and the value of the estate demand: and, if after that, he makes an order, which the guardian disobeys, as to the furnishing of security, then there are remedies against the guardian without the consequence of the minor being left in this position, with no valid order appointing a guardian made at all and his ceasing, or rather being never taken, to be a ward of the Court. It is only right to say that we gather that in this case there is no question of any dangerous consequences to the minor owing to this misfortune that happened, but there are cases readily conceivable, and probably within the experience of many, where young men in this city are surrounded by circumstances which would make it imperative for the Court in their own interests to provide them with guardians. We think, therefore, that there being a doubt as to the validity of suspensory orders, it will be

well if the practice of this Court in future were not to make orders in this form, but to adopt the procedure which we have suggested.

We are therefore of opinion that this boy, Natha Venkatesa Perumal Chetty, is now a major.

N.R.

ORIGINAL SIDE—FULL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice*, *Mr. Justice Krishnan and Mr. Justice Beasley.*

RAJAH INUGANTI VENKATARAYANIM VARU *alias* VENKATARAMAYYA GARU (PLAINTIFF),

1925, October 20.

v.

W. H. NURSE (DEFENDANT).*

Order VI-A, rule 62 *of Original Side Rules—Suit on negotiable instrument by or against legal representatives of the original parties to the instrument—Summary procedure alone allowed by the rule.*

Rule 62 of Order VI-A of the Original Side Rules (Madras) is mandatory; hence all suits on the Original Side of the High Court on bills of exchange, hundis and promissory notes whether by or against the original parties thereto or by or against their legal representatives must be laid only according to the summary procedure therein prescribed.

CASE referred to a Full Bench in C.S. No. 720 of 1925, Original Side, at the instance of SRINIVASA AYYANGAR, J.

Rule 62 of Order VI-A is given in the judgment.

The facts are given in the judgment.

N. Chandrasekara Ayyar for the plaintiff.—Rule 62 of Order VI-A of the Original Side Rules is mandatory and unlike

* C.S. No. 720 of 1925.