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interests. The question of guilt is for the jury to consider, who must have before them all the evidence, and who must consider it without reference to the interests of any other person than the public and the prisoner. The words of s. 499 are as follows:—"Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing, or having reason to believe, that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

The question here is whether, with reference to these words alone, and apart from the rest of the section, Captain Hearsey intended to harm the reputation of Mr. Laidman. Before this question can be answered, it is essential to see what Mr. Laidman's reputation is, and, moreover, Mr. *Ross* puts the case for the prosecution on the ground that Captain Hearsey acted with a malicious intention to injure the complainant by telling a falsehood and not with a genuine intention to furnish proper information to the public. Upon this issue, it must be material to ascertain whether Captain Hearsey, in his letter *as a whole*, was telling the truth or not.

For these reasons I rule that this evidence is admissible, that is to say, first, because it relates to the question what is the reputation which the defendant is said to have harmed; and secondly, because it must be gathered from the document *as a whole* whether it shows a malicious intention or not. I decline to reserve the point for the Full Court, being of opinion that to do so would not serve the interests of either party.

CIVIL REVISIONAL.

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July 23.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Tyrrell.

BALDEO DAS (PETITIONER) *v.* GOBIND SHANKAR (OPPOSITE PARTY.)*.

Act XL of 1858 (*Bengal Minors Act*), *s.* 3—*Certificate of administration—Right of holder of certificate to defend suits connected with minor's estate—High Court's powers of revision—Civil Procedure Code, ss.* 2, 622.

Under s. 3 of the Bengal Minors Act (XL of 1858), the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration

* Application No. 147 of 1885, for revision under s. 622 of the Civil Procedure Code, of an order of Babu Kashi Nath Biswas, Subordinate Judge of Benares, dated the 5th June, 1885.

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under the Act, to defend a suit on the minor's behalf, as guardian of such minor.

Where a Subordinate Judge had so acted,—*held* that the High Court had no power to revise his order under s. 622 of the Civil Procedure Code.

The facts of this case are sufficiently stated for the purposes of this report, in the judgment of Petheram, C. J.

Mr. *G. E. A. Ross*, Babu *Dwarka Nath Banarji*, and Pandit *Ajudhia Nath*, for the petitioner.

Mr. *T. Conlan*, Munshi *Hanuman Prasad*, Lala *Juala Prasad* and Munshi *Madho Prasad*, for the opposite party.

PETHERAM, C. J.—I think that this application must be rejected. It is an application under s. 622 of the Civil Procedure Code, against an order of the Court of the Subordinate Judge, in which that Court refused to exercise a jurisdiction vested in it by law. The plaintiff brought an action against a particular person who did not appear in the suit. A third person came forward, who is the applicant before us, and claimed to be put on the record as defendant. The Subordinate Judge refused to admit him to defend the suit. I think he had no power to make that entry on the record. This third person urged that he had a right to come in under s. 3 of Act XL of 1858. Now, the application is based on the fact that the applicant has obtained a certificate, and no person, by s. 3 of Act XL of 1858, is entitled to institute or defend any suit for a minor unless he has obtained a certificate under the Act. The latter part of that section makes a certificate necessary, and by implication it gives him the right when he has obtained the certificate. Subsequent to the passing of Act XL of 1858, the Civil Procedure Code was passed; but, after looking at s. 464 of that Code, it would appear that we must look at this application as if these provisions, from s. 442 to s. 462, did not exist. Now, the words contained in s. 3 of Act XL of 1858, and the prohibition therein contained, cannot be made larger than they are. After a person has obtained a certificate, he may take the conduct of the minor's estate in his hands, and bring and defend suits. Supposing that this third party is right in his claim, he may ask to defend the suit, not in his own name, but as guardian of the minor.

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The Judge had no power to pass the order he did; but we cannot interfere in revision, and this application must be rejected with costs.

TYRRELL, J.—I agree with the learned Chief Justice's view of this application. I think also that it is very questionable whether any application to this Court would lie as made before us. The application to the lower Court, if made under s. 32 of the Act, is not appealable. There is no appeal under s. 588, but there is the question whether the order of the lower Court could not be considered a decree, within the meaning of the definition section (2) of the Civil Procedure Code. The petitioner claimed to appear as guardian. The Court decided he had not that right. That order decided his position in the suit. It seems to me that an appeal might have been preferred, and for this reason also this application must be rejected with costs.

Application rejected.

APPELLATE CIVIL.

1885
July 23.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Tyrrell.

HIRA AND ANOTHER (PLAINTIFFS) *v.* KALLU AND OTHERS (DEFENDANTS).*

Pre-emption—Hindus—Local custom—Sale to a stranger.

The right of pre-emption, when it exists among Hindus, is a matter of contract or custom agreed to by the members of a village or community. Such a custom is not properly described as attached to the land, and as soon as any members of a Hindu community, who have agreed to be governed by it, sell to any one who is a stranger to the agreement, the land is no longer subject to pre-emption.

THIS was a suit to enforce a right of pre-emption, and was founded upon an alleged custom of a *mohalla* in the city of Muzaffarnagar, in which the pre-emptive property, which was part of a house, was situated. All the parties to the suit were Hindus. The defendant-vendee pleaded, *inter alia*, that her right to the property was preferential to that set up by the plaintiffs, inasmuch as she had lived for many years in the house in question, which had formerly belonged to her husband. The Court of first instance (Munsif of Muzaffarnagar) found that the existence of the alleged custom in the part of the town in which the property was situate was

* Second Appeal No. 1481 of 1884, from a decree of C. W. P. Watts, Esq., District Judge of Saharanpur, dated the 10th June, 1884, affirming a decree of Maulvi Muhammad Said Khan, Munsif of Muzaffarnagar, dated the 7th December, 1883.