

1900

SHIAM  
KARAN  
v.  
RAGHUNAN-  
DAN  
PRASAD.

IN this case the petition of appeal was signed and presented to the Court by a person who was neither an advocate, *vakil* or attorney of the Court, nor a suitor, but who appears to have been a *mukhtar-a'am* of the appellant. At the hearing of the appeal a preliminary objection was taken that this was not a valid presentation, having regard to section 8 of the Letters Patent.

Munshi *Gulzari Lal* for the appellants.

Babu *Jogindro Nath Chaudhri*, Pandit *Sundar Lal* and Munshi *Gokul Prasad*, for the respondents.

KNOX, ACTING C. J., and BLAIR, J.—A preliminary objection has been taken to the effect that the petition of appeal, which was presented in this Court, was presented by an agent and not by any of the persons enumerated in section 8 of the Letters Patent of this Court. The memorandum of appeal appears to have been presented by some person who was clearly neither of the appellants before the Court, and who may or may not be a person holding a power-of-attorney to appear and act on behalf of the appellant. It is contended that a mere presentation of an appeal does not come within the words of section 8. We hold that this contention is wrong. The words of section 8 are very clear and positive. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

1900  
May 2.

*Before Mr. Knox, Acting Chief Justice, and Mr. Justice Blair.*

MANMOTHONATH BOSE MULLICK (PLAINTIFF) v. BASANTO KUMAR BOSE MULLICK (DEFENDANT).\*

*Act No. VIII of 1890 (Guardian and Wards Act), section 41—Guardian and Ward—Death of guardian—Suit by ward against guardian's son for rendition of accounts.*

*Held*, that no suit would lie by a ward against the son of his late guardian for rendition of accounts. *Rameshwar Tiwari v. Kishun Kumar* (1) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* and Babu *Satish Chandar Banerji* for the appellant.

\* First Appeal from Order No. 117 of 1899 from an order of Khan Bahadur Mir Akbar Husain, dated the 14th September 1899.

(1) Weekly Notes, 1882, p. 6.

Babu *Jiwan Chandar Mukarji* (for whom *Pandit Baldeo Ram Dave*), for the respondent.

KNOX, ACTING C. J., and BLAIR, J.—The plaintiff, who is the appellant before us, filed a suit in the Court of the Munsif of Allahabad, alleging that one Babu Tara Kinker Bose Mullick, who had been appointed his guardian, had not rendered accounts beyond the first year of such guardianship, that the said guardian died during plaintiff's minority, and that "the plaintiff has every reason to believe that out of the said assets the said Babu Tara Kinker Bose Mullick misappropriated a large sum of money to his own use." Nothing further was alleged either as to the nature, quantity, kind or manner of the misappropriation which the plaintiff believed had been made. But the plaintiff called upon the defendant, who is the son of the said guardian, to settle the accounts of the estate, to pay out of the estate any sum or sums found due upon such settlement of accounts, or if the accounts could not be settled, to pay such sum or sums as the plaintiff might succeed in proving to be due. The Court of first instance decided that the son was bound to render an account. In appeal the District Judge held that the son could not be called upon to render accounts, and that it was no business of his to do so; that the plaintiff could call upon him to hand over any papers, account-books, etc., relating to the estate which might have come into his possession. He further held that upon such a vague allegation of misappropriation no decree could be given against the defendant. He accordingly set aside the decree for the rendition of accounts, and remanded the case to the Court below with instructions to frame an issue regarding the items believed to have been misappropriated. In appeal before us the appellant urges that as the respondent is in possession of his father's estate, he can be held liable to render accounts, and more to account to him for the period of his father's management. For this proposition no authority was cited to us beyond certain principles said to be found in the case of *Concha v. Murrieta* (1). That case related to special circumstances based upon the law of Peru. On the other hand, we have a case of this Court, namely, *Rameshur Tiwari v. Kishun Kumar* (2). The learned

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MANMOTHO-  
NATH  
BOSE  
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v.  
BASANTO  
KUMAR  
BOSE  
MULLICK.

(1) (1889) L. R., 40, Ch. D., 543.

(2) Weekly Notes, 1882, p. 6.

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MANMOTH-  
NATH  
BOSE  
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Judges who decided that case evidently considered that the law governing a relationship of the special nature must be looked for within the four corners of the Statute which created that relationship; the same law governs the present case; and they held that under section 21 of Act No. XL of 1858 the Judge had no power to require the heirs of a guardian to account for moneys received and disbursed by the father in the capacity of a guardian. The provisions of section 21 are personal to the guardian himself, and refer to cases in which his certificate has been recalled for incompetency, dishonesty or some other good cause, and not where his appointment has lapsed through death. This precedent was presumably known to the Legislature when they enacted Act No. VIII of 1890, and from the words used by them in section 41 of that Act, it seems to have been considered as the law which should prevail upon the point. The respondent has filed objections, and one of them is to the effect that the present suit would not lie. The objection is a good one and fatal to the suit.

We dismiss the appeal, and upon the objection taken we set aside the order of remand, and further direct that the suit as brought stand dismissed with costs in all Courts.

*Appeal dismissed.*

1900  
May 3.

*Before Sir Arthur Strachey, Knight Chief Justice, and Mr. Justice Banerji.*

MALIK MUHAMMAD KARIM AND OTHERS (PLAINTIFFS) v. GANGA PANDE AND OTHERS (DEFENDANTS).\*

*Act No. XII of 1881 (N.-W. P. Rent Act), sections 93, 94—Suit for recorded share of profits—Suit for settlement of accounts—Limitation.*

Where for the purposes of a suit in which a share of profits is claimed by a recorded co-sharer, either against the lambar্দár or against one or more or all of the other co-sharers, the Court is asked to adjust the accounts, what has to be looked to is the main and substantial object of the suit. If the main and substantial object of the suit is to obtain a settlement of accounts, and the obtaining a decree for a share of the profits is only the ulterior object of obtaining such settlement of accounts, then the suit is to be regarded as a suit for settlement of accounts. If the main and substantial object of the suit is to recover a share of profits which the defendant has received in excess of what he is entitled to, and if the Court is only asked to go into the accounts

\* Appeal No. 5 of 1899 under section 10 of the Letters Patent.