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 v.  
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regard to the provisions of section 9 of Act VIII of 1890 the District Judge of Moradabad might very well have refused to entertain that application. We might also refer to clause (h) of section 39 of the same Act, which shows that the Legislature contemplates that an applicant for guardianship should reside within the jurisdiction of the court to which he makes the application. We, therefore, think that the application of Asghar Ali should not have been made to the District Judge of Moradabad. We dismiss his appeal. But the dismissal of his appeal or the rejection of the application by the District Judge of Moradabad will not stand in his way, if he chooses to make a proper application according to law in a court which has jurisdiction to entertain it. As the objection as to the want of jurisdiction was not taken by the objectors in the court below we think that the costs in the application of Asghar Ali should be borne by the parties. In the case of Hamid Ali Khan we make no order as to costs.

*Appeal dismissed.*

*Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.*

SUBHAG SINGH (OBJECTOR) v. RAGHUNANDAN SINGH (APPLICANT).<sup>\*</sup>  
 Act No. VIII of 1890 (Guardians and Wards Act), Chapter II—Appointment of guardian—Procedure—Evidence—Admissibility of qanungo's report as to fitness of applicant.

Three persons applied to the District Judge to be appointed guardian of the person and property of a minor. The District Judge asked the Collector to say which one of the three persons was the fittest to be appointed guardian. A report was called for by the Collector from the girdawar qanungo, who reported in favour of the respondent. The District Judge, thereupon, appointed him as guardian of the person and property of the minor.

*Held*, that the report of the qanungo could not be treated in law as evidence, and that it was the duty of the District Judge to have called upon the different claimants to give evidence and to decide on that evidence.

THE District Judge of Ghazipur, having before him three applicants for appointment as guardian of a certain minor, made a reference to the Collector of the district asking him whether he was inclined to take the property of the minor under the management of the Court of Wards, and if not, to say which one of the three persons, viz. Raghunandan Singh, Har Shankar

<sup>\*</sup> First Appeal No. 140 of 1913 from an order of Sri Lal, District Judge of Ghazipur, dated the 12th of April, 1913.

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Singh and Subhag Singh was the fittest person for appointment as guardian of the person and property of the minor. A report was presumably called for by the Collector from the girdawar qanungo who reported in favour of Raghunandan Singh. On the receipt of that report and without taking any further evidence in the case, the learned Judge appointed Raghunandan Singh as guardian and rejected the prayers of the other two persons. Subhag Singh appealed to the High Court.

*Mr. M. L. Agarwala* and *Munshi Harnandan Prasad*, for the appellant.

The Hon'ble *Dr. Tej Bahadur Sapru* and *Pandit Rama Kant Malaviya*, for the respondent.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—This is an appeal under Act VIII of 1890 from an order passed by the learned District Judge of Ghazipur, appointing one Raghunandan Singh guardian of the person and property of his minor son-in-law, named Padam Deo Narain Singh. It appears that in addition to Raghunandan Singh there were two other persons who moved the lower court for their appointment, viz. Har Shankar Singh and Babu Subhag Singh. Har Shankar Singh described himself as the paternal uncle of the minor. The learned Judge as appears from the serial order, dated the 21st of February, 1913, asked the Collector of the district whether he was inclined to take the property of the minor under the management of the Court of Wards, and if not, to say which one of the three persons, viz. Raghunandan Singh, Har Shankar Singh and Subhag Singh was the fittest person for appointment as guardian of the person and property of the minor. A report was presumably called for by the Collector from the girdawar qanungo, who reported in favour of Raghunandan Singh. On the receipt of that report and without taking any further evidence in the case, the learned Judge appointed Raghunandan Singh as guardian and rejected the prayers of the other two persons. Subhag Singh has come up in appeal to this Court. He contends that the report of the qanungo cannot be treated in law as evidence in the case and that the learned Judge should have called upon the different claimants to give evidence and should have decided on that evidence. We think that this contention is well-founded and we therefore, set aside the order of the learned Judge under appeal

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and direct him to dispose of the applications and objections of the three persons named above, according to law. The costs of this appeal shall abide the event.

*Appeal allowed.*

## PRIVY COUNCIL.

BATUK NATH (DECREE-HOLDER) v. MUNNI DEI AND OTHERS  
(JUDGEMENT-DEBTORS.)

[On appeal from the High Court of Judicature at Allahabad.]

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*Act No. XV of 1877 (Indian Limitation Act), section 4, and schedule II, article 179, clause 2—Limitation—Application for execution of decree—Practice of Privy Council—Order for dismissal for want of prosecution of appeals to Privy Council—Order of 15th June, 1853, Rule V—Dismissal of appeal for want of prosecution without order made in the appeal.*

Under rule V of the Order in Council of 15th June, 1853, \* where for a period specified in the order the appellant to His Majesty in Council, or his agent, has not taken any effectual steps for the prosecution of the appeal, it stands dismissed without further order.

Such a dismissal for want of prosecution is not the final decree of an appellate court within the meaning of article 179, clause 2, of schedule II of the Indian Limitation Act, 1877, from which a period of limitation can be reckoned under that article in support of an application for execution of a decree.

In this case the application for execution having been made more than three years after the decree of the High Court was therefore barred by lapse of time, and should have been dismissed on that ground under section 4 of the Limitation Act.

APPEAL from a judgement and decree (4th June, 1910) of the High Court at Allahabad, which affirmed a judgement and decree (8th September, 1908) of the Court of the Subordinate Judge of Agra, made on an application for execution of a decree.

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\* Order in Council, dated 15th June, 1853: Rule V:—"That a certain time be fixed within which it shall be the duty of the appellant or his agent to make such application for the printing of the transcript, and that such time be within the space of six calendar months from the arrival of the transcript and the registration thereof in all matters brought by appeal from Her Majesty's colonies and plantations east of the cape of Good Hope, or from the territories of the East India Company, and within the space of three months in all matters brought by appeal from any other part of Her Majesty's dominions abroad, and that in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time or times respectively the appeal shall stand dismissed without further order."

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\* Present:—Lord SHAW, Lord SUMNER, Sir JOHN EDGE and Mr. AMBER ALI.