

sufficient for us to say that we agree with the mode in which that case was decided. But it may be as well to add that in our opinion it is clear that such an order as this is not a decree within the meaning of the definition in section 2 of the Code of Civil Procedure, because, reading the whole of that section, it is clear, we think, that a decree can only be in a suit, and that this proceeding is not a suit. It not being a decree within that definition, it must be an order, and it remains then only to be seen whether any appeal is given either by section 588 of the Code of Civil Procedure or some special provision of the Bengal Tenancy Act. No appeal is given by section 588, nor is any given by any special provision of the Bengal Tenancy Act, and we think therefore that the Judge was right in deciding that no appeal lay in this case, and that this present appeal must be dismissed with costs.

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PEARL
MOHUN
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v.
BARODA
CHURN
CHUCKER-
BUTTI.

Appeal dismissed.

A. A. C.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and
Mr. Justice Ghose.*

MOHIMA CHUNDER BISWAS (PETITIONER) v. TARINI SUNKER
GHOSE (OBJECTOR).*

1892
March 22.

*Appeal—Guardians and Wards Act (VIII of 1890), s. 41—Removal
of guardian—Order refusing to remove a guardian.*

No appeal lies under the Guardians and Wards Act (VIII of 1890) from an order of a District Judge refusing to remove a guardian.

THIS was an appeal from an order dismissing an application of one Mohima Chunder Biswas, who stated in his petition that one Kali Prosonno Ghose Chowdhry, a minor, having lost his parents, Tarini Sunker Ghose, the minor's paternal uncle, obtained in the month of March 1883 a certificate under Act XL of 1858, appointing him guardian of the person and property of the minor; that Tarini Sunker Ghose had neglected the maintenance and education of the minor and was unfit to continue his guardian. The petitioner therefore prayed that Tarini Sunker Ghose might be ordered to file an inventory of the property and an account of the receipts and disbursements of the minor's estate, and that the petitioner, or some other competent person might be appointed

* Appeal from Order No. 227 of 1891, against the order of J. Postford, Esq., Judge of Faridpur, dated the 15th of June 1891.

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guardian of the person and property of the minor under the Guardians and Wards Act (VIII of 1890). The petitioner was the husband of the minor's sister, and was supported in his application by three of the relatives of the minor.

Tarini Sunker Ghose in his petition of objections denied the above allegations, and submitted himself to the judgment of the Court.

Upon taking evidence on both sides the District Judge refused the application, holding that no cause had been made out for the removal of the minor's guardian, Tarini Sunker Ghose. Mohima Chunder Biswas appealed to the High Court.

Baboo *Mohini Mohan Chakravarti* appeared for the appellant.

The respondent did not appear.

The judgment of the Court (PETHERAM, C.J., and GHOSE, J.) was delivered by—

GHOSE, J.—This is an appeal against an order of the District Judge of Faridpur refusing to dismiss a guardian. The guardian had been appointed under Act XL of 1858, which has since been repealed by the Guardians and Wards Act (VIII of 1890); and the first question that we have to determine is whether an appeal lies to this Court against the order of the District Judge. Section 47 of Act VIII of 1890 gives an appeal in certain cases; and what we have to see is, whether the order complained against falls within any of the cases mentioned in that section.

We have examined section 47 and the other portions of the Act; but we have failed to discover that the Legislature has provided for an appeal to this Court from an order of the kind with which we are now concerned.

We may here mention that the question, as to whether an appeal lies to this Court from the order complained of, was very candidly brought to our notice by the learned vakool, who appeared for the appellant, at the outset of his address; and we have come to the conclusion that no appeal lies.

The result is that this appeal will be dismissed upon that ground only, but without costs, as the respondent has not appeared.

Appeal dismissed.