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by cl. (b) of s. 93, *supra* : and the cognizance of such a "dispute or matter" is definitively limited to the Revenue Courts. The decision of the Revenue Court against the respondent became final ; and by the rule of s. 13 of the Civil Procedure Code the present action is barred. The present suit is not one in which the question arises as to which of two alternative Courts, one admittedly having jurisdiction, should entertain the case. The point is whether such a suit is maintainable in any Court. The Full Bench ruling mentioned above has no application to this case. It was there held that a dispute regarding a landlord's power to demolish a tenant's well is cognizable by a Civil Court ; and that a decision by a Revenue Court to the effect that compensation should be given to a tenant ejected for building a well is not a determination of the landholder's right to demolish the well as having been constructed by a person not entitled to do so, and is consequently not a bar to a suit by the landholder in the Civil Court for the demolition of the well on this ground. The distinction between that case and the circumstances of the litigation with which we have to deal in this appeal is obvious. We must set aside the decrees of the Courts below, and decree this appeal with costs.

Appeal allowed.

Before Mr. Justice Straight and Mr. Justice Oldfield.

AMAR NATH, GUARDIAN OF LACHMI NARAIN, MINOR (PLAINTIFF), v.
THAKUR DAS AND OTHERS (DEFENDANTS).*

Guardian and minor—Security-bond—Suit on minor's behalf against guardian's sureties—Assignment of security-bond—Act XL of 1858—Act IX of 1861—Act X of 1865, s. 257.

B, having been granted by a District Court a certificate under Act XL of 1858 in respect of the estate of a minor, the Judge of such Court called on her to furnish security, and certain persons accordingly gave security-bonds to the Judge on her behalf. Subsequently *B*'s certificate was taken from her, and was granted to *A*, who brought a suit on the minor's behalf against *B*'s sureties for the value of the property intrusted to *B*. The security-bonds in question were not assigned by the Judge to *A*.

Held that, inasmuch as the plaintiff was seeking to enforce contracts which were never made with him or any other person in the character of legal representative of the minor, he had no legal *status* to maintain the suit.

* First Appeal No. 51 of 1881, from a decree of Maulvi Maqsd Ali Khan, Subordinate Judge of Saharanpur, dated the 1st March, 1881.

Also that no equitable rights were created in the minor by the bonds, which would render the suit maintainable.

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Quere.—Whether the Judge of a District Court is competent to call upon a person to whom he grants a certificate under Act XL of 1853 to furnish security; and whether, where he has done so, and security-bonds have been given to him, he can assign them in the manner provided in s. 257 of the Succession Act 1835.

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THE material facts of this case were as follows :—One Lachmi Chand died, leaving him surviving three sons—Nidhi Mal, Saudagar Mal, and Beni Ram. Saudagar Mal died childless. Nidhi Mal, at his death in 1862, left a widow, Balkuar. Beni Ram, who survived until May, 1875, had one son, Bhola Nath, who died in his father's lifetime, leaving a widow, Muso, daughter of one Shibbi, and a son, Lachmi Narain, the minor plaintiff in this suit. After the death of Muso questions arose as to the guardianship of the minor Lachmi Narain; Shibbi, his maternal grandmother, applying, on the one hand, for a certificate under Act IX of 1861, and being opposed by Balkuar, widow of Nidhi Mal, on the other. In the result a compromise was arrived at, by which it was arranged that Shibbi should have the guardianship of the person of the minor and an allowance of Rs. 50 per mensem, while Balkuar was to have the custody of his property. With regard to the latter, the District Judge of Saharanpur, under what power or authority did not appear, required Balkuar to find security, and on the 3rd September, 1875, the defendants-respondents (Ganga Rai excepted) executed a bond for Rs. 50,000, hypothecating certain property as security for the same. This was given by the sureties to the then District Judge of Saharanpur, who had called upon Balkuar to find security, and the main undertaking was as follows :—“ We the sureties and our representatives shall be responsible to the extent of the security in case of Balkuar failing to give up or hesitating to make over the goods and rents, &c., when called upon by the Court to do so; that whatever order will be passed by the Court to us, we the sureties will carry out the same.” This bond was duly registered. On the 24th September, 1875, another bond for Rs. 20,000 was executed by Hardial Singh, represented in this appeal by the respondent Ganga Rai, as surety for Balkuar to that amount, in which after reciting that Balkuar “ had been called upon by the Zila Court of Saharanpur to furnish security,” the obligor declared

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as follows:—"I agree and write that I, the surety, will make good the money out of my own hypothecated property if Balkuar in any way damages the goods intrusted to her". As a matter of fact, property to the value in round figures of some Rs. 60,000, belonging to the minor Lachmi Narain, was made over to Balkuar and acknowledged by her to have come into her possession by two receipts, dated respectively the 5th December, 1875, and the 15th January, 1876. It further appeared that on the 16th March, 1876, a certificate was given to Balkuar under Act XL of 1858. On the 20th February, 1878, application was made by one Amar Nath for revocation of the certificate to Balkuar, and grant of a certificate to himself under Act XL of 1858. Both Shibbi and Balkuar were cited to appear and show cause, and ultimately, on the 20th March, 1878, Balkuar's certificate was taken away, and one for the custody of the person and property of the minor was granted to Amar Nath. There was an appeal from this decision to the High Court, which, however, confirmed the order on the 15th November, 1878. At this time a suit had been instituted by Balkuar against the minor by his guardian Amar Nath, in which, alleging her cause of action to have accrued at the date of the revocation of her certificate, and claiming that half the property which had been intrusted to her belonged to her husband Nidhi Mal, and that Beni Rám, the grandfather of the minor, had only been in possession of it as manager for her, and that some of it had been purchased by him on her account, she first asked for maintenance of possession as to one-half, but subsequently altered her prayer to relief to one for declaration of her right to, and possession of, such one-half. Balkuar died while an appeal in this suit was pending in the High Court, which, by an order of a Division Bench of the 7th June, 1880, was declared to have abated. The present suit, when this took place and when Balkuar died, was pending, having been instituted on the 2nd October, 1879, in the Court of the Subordinate Judge of Saharanpur. In it Amar Nath claimed, on behalf of the minor appellant, to recover from Balkuar and her sureties the property of the minor or its value. Nothing was done on Balkuar's death to substitute any representative in her place. On the 30th January, 1880, the plaint was rejected for inadequacy in the court-fees paid. There was an appeal to the

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High Court, which, on the 3rd August, 1880, reversed the Subordinate Judge's decision, and directed the restoration of the case to the file, and its disposal on the merits. This having been done, the matter came to trial, and was determined on the 1st March, 1881, the plaintiff's claim being dismissed. For the respondents the objection was taken, for the first time, in support of the Subordinate Judge's decision, that the plaintiff was not competent to maintain a suit at all, he not being the obligee, or representative of the obligee, or assignee of the obligee of either of the bonds of the 3rd and 24th September, 1875. It was urged for the appellant that the Court should not allow a point of this kind to be raised at so late a stage, especially when no objections had been filed by the respondents under s. 561 of the Procedure Code.

Pandits *Bishambhar Nath* and *Ajudhia Nath*, for the appellant.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*), *Babu Oprokash Chandar*, and *Babu Baroda Prasad*, for the respondents.

STRAIGHT, J. (After stating the facts of the case continued:)—
 I am of opinion that we are bound to entertain the objection taken on behalf of the respondents, going as it does to the very root of the litigation and the capacity of the plaintiff to figure in it at all. I have already remarked, that it does not appear under what authority the Judge of Saharanpur originally called upon Balkuar to provide security, when she was appointed guardian. Certainly no such power as that mentioned in s. 257 of the Indian Succession Act is to be found either in Act XI of 1858 or Act IX of 1861. But while I am by no means prepared to hold that the Judge was incompetent to take the bonds of the 3rd and the 24th September, I entertain the very gravest doubts as to his capacity by assignment to entitle another person to sue upon them, in the absence of any distinct provision of law to the effect of the kind I have already referred to, as contained in s. 257 of the Indian Succession Act. That enactment seems to have been framed on ss. 81 and 83 of 20 and 21 Vic., c. 77, which, with s. 15 of 21 and 22 Vic., c. 95, now regulates the procedure of the Probate Court in England in such matters. In the case now before us, however, no assignment of the bonds to the plaintiff, as a matter of fact, has ever been

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made, and I am at a loss to find any authority ever conferred upon him by any person entitled to give it to put them in suit. It therefore comes to this, that the plaintiff, of course always as representing the minor, is seeking to enforce a contract which was never made with him or any other person in the character of legal representative of the minor. It seems to me that, under such circumstances and upon the most ordinary principles of law, he has no legal *status* to maintain an action. The two instruments of September the 3rd and the 24th were obviously bonds given by the sureties to the Judge of Saharanpur as security for the due and honest performance of her duty by Balkuar in her character of guardian to the minor, and as the person accountable *to the Court* for the proper administration of his estate. The following passage from *Pollock on Contracts*, page 196, has direct bearing under this head:—"The rule is now distinctly established, so far as any common law right of action is concerned, that a third person cannot sue on a contract made by others for his benefit, even if the contracting parties have agreed that he may, and that near relationship makes no difference." In the course of the argument I pointed out to the pleader for the respondents that perhaps in equity, the bonds having been given to the Judge, virtually in the interest and for the benefit of the minor, he was entitled to take advantage of them, and, by his guardian, to enforce them. But upon consideration I find it impossible to hold that any equitable rights were created in the minor by the bonds, which would render the present suit maintainable. The only other question that seems to arise is, whether those instruments can be construed as creating a trust as between the minor and the respondents. Perhaps it is sufficient to say that this is not the basis upon which the plaintiff comes into Court, and he neither alleges a trust nor seeks to have it declared, though I feel bound to add that, in my opinion, no trust, either express or implied, is shown to exist. It is true that the plaint does not specifically claim upon the contracts contained in the two bonds, but asks for damages. This does not alter the position, for any right to sue, whether for the enforcement of the contracts or for damages for their breach, arises within the four corners and out of the contracts themselves. Entertaining the views I have expressed, I am constrained to come to the con-

clusion that the objection urged for the respondents is fatal to the suit, and that the plaintiff has no legal *status* to maintain it. I do so with much regret, but plain principles of law seem to preclude me from arriving at any other result. I am therefore of opinion that, on the grounds I have stated, the decision of the Subordinate Judge must be sustained, and this appeal dismissed with costs.

OLDFIELD, J.—I concur with my colleague, Mr. Justice Straight, in holding that the suit cannot be maintained.

APPELLATE CRIMINAL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

EMPRESS OF INDIA v. YAKUB KHAN.

Confession—Code of Criminal Procedure (Act X of 1872), ss. 122, 193, 346—Code of Criminal Procedure (Act X of 1882), ss. 342, 364.

On a certain day a confession by an accused person was recorded by a Magistrate, and on the next day the same Magistrate, having jurisdiction to do so, examined the witnesses for the prosecution and eventually committed the accused. *Held*, following *Empress v. Anuntram Singh* (1), that such confession, having been made to a Magistrate competent to hold, and who actually then was holding, an inquiry preliminary to committal, must be regarded as falling within s. 193 of Act X of 1872, or s. 342 of Act X of 1882, and as such governed by the reservations contained in s. 346 of the former Act or s. 364 of the latter.

Observations on ss. 342 and 364 of Act X of 1882 (Criminal Procedure Code).

THIS was an appeal by the Local Government from a judgment of Mr. E. B. Thornhill, Sessions Judge of Aligarh, dated the 29th June, 1882, acquitting one Yakub Khan of rape. The evidence against the accused consisted of a confession made by him to the committing Magistrate, and of the statement of the girl, aged seven years, on whom the offence was committed, who was examined without being affirmed. The Sessions Judge refused to receive the accused's confession in evidence, and, being of opinion that the accused ought not to be convicted on the statement merely of the girl, acquitted him. The Sessions Judge's reasons for refusing to receive the confession in evidence were as follows:—

“The accused, on the 12th May, made a statement before the committing Magistrate, and the record shows that the accused was brought up by the police before the Magistrate on the 12th May, to have his statement recorded, and no witnesses were examined till the

(1) I. L. R., 5 Calc., 954.

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