

take over the case at a later stage. I do not think there is any force in this contention as the Crown is technically the complainant or the prosecutor in all criminal cases.

[*The remainder of the judgment is not required for the purpose of this report—ED.*]

N. F. E.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

RALLA SINGH (PLAINTIFF) Appellant,

versus

BISHNA AND OTHERS (DEFENDANTS) Respondents

Civil Appeal No. 2752 of 1922.

1925

Dec. 1.

Minor—respondent—Appeal filed without naming a guardian ad litem—Subsequent application to have guardian's name inserted—Limitation.

A second appeal was presented in the High Court in which one of the respondents was a minor without naming a guardian *ad litem*. An application was made, long after the expiration of the period allowed for the appeal, to have the name of the guardian entered in the memorandum of appeal.

Held, that the appeal must be deemed to have been filed, not on the day on which the name of his guardian is entered in the memorandum of appeal, but on the original day of its presentation.

Though no proceedings against a minor, who is impleaded as a defendant in a suit or is made a respondent in an appeal, can be taken until his guardian for the suit or appeal is appointed to represent him, the nomination of a guardian is not an essential requirement for the filing of a suit or the presentation of an appeal, and the guardian can be nominated and appointed subsequently.

Khem Karan v. Har Dayal (1), and *Rup Chand v. Dasodha* (2), followed.

(1) (188) I. L. R. 4 All. 37.

(2) (1907) I. L. R. 30 All. 55.

Second appeal from the decree of A. H. Parker, Esquire, District Judge, Ambala, dated the 10th August 1922, affirming that of Lala Manohar Lal, Munsif, 1st class, Ambala, dated the 11th March 1922, dismissing the plaintiff's suit.

1925

RALLA SINGH

v.

BISHNA.

NAND LAL, for Appellant.

JAGAN NATH, AGGARWAL, for Respondents.

The judgment of the Court was delivered by—
 ZAFAR ALI J.—This was a declaratory suit by a reversioner to avoid a sale of ancestral land on the usual ground that the sale was without consideration and necessity. The plaintiff did not succeed in the trial Court, and his appeal to the District Judge having also failed he appears in this Court in second appeal. Counsel for the respondents raises a preliminary objection that the appeal is barred by time because the name of the guardian *ad litem* of the minor respondent Ishar Singh is not mentioned in the memorandum of appeal. An application for entering his name was filed, but long after the expiration of the period allowed for filing the appeal. That application is also before us for disposal. The objection, however, possesses no force because as held in *Khem Karan v. Har Dayal* (1), which was followed in *Rup Chand v. Dasodha* (2), an appeal in which a respondent is a minor should be deemed to have been filed not on the day on which the name of his guardian is entered in the memorandum of appeal, but on the original date of its presentation. Though no proceedings against a minor who is impleaded as a defendant in a suit or is made a respondent in an appeal can be taken until his guardian for the suit or appeal is appointed to represent him, the nomination of a guardian is not an essential requirement for the filing of a

(1) (1881) I. L. R. 4 All. 37.

(2) (1907) I. L. R. 30 All. 55.

suit or the presentation of an appeal, and the guardian can be nominated and appointed subsequently. The guardian *ad litem* of the minor is also one of the respondents and the respondents are represented in this Court by counsel. We therefore overrule the objection and grant the application.

[*The remainder of the judgment is not required for the purpose of this report—ED.*]

A. N. C.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Martinau.

ACHHRU RAM AND OTHERS—Petitioners

versus

THE CROWN—Respondent.

Criminal Revision No. 1684 of 1925.

Indian Penal Code, 1860, section 99—whether applicable where the public servant acted illegally—Indian Income Tax Act, XI of 1922, section 22 (4)—Income Tax Officer can call for production of accounts, but cannot insist upon their production.

An Income Tax Officer is empowered, under section 22 (4) of the Indian Income Tax Act, to serve the proprietors of a firm with a notice to produce their accounts, but there is no provision of law by which he can insist on their producing the accounts if they decline to comply with the notice.

Where, therefore, an Income Tax Officer entered upon the petitioners' premises in order to inspect their accounts and remained on the premises for that purpose against the will of the petitioners, his act amounted to criminal trespass, and the petitioners were within their rights in forcibly ejecting him when he refused to leave. Section 99 of the Indian Penal Code would not deprive petitioners of their right of private defence as the Income Tax Officer's proceedings were wholly illegal, and he was not acting in good faith under colour of his office.

1925

Dec. 23.