

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Broadway.*

1927

Jan. 19.

DAMODAR DAS—Appellant

versus

Mst. JATTI—Respondent.

Letters Patent Appeal No. 149 of 1927.

*Guardians and Wards Act, VIII of 1890, section 45—
Whether applicable to guardians appointed by will—Court—
duty of—to make inquiry.*

*Held, that the provisions of section 45 of the Guardians
and Wards Act are applicable to guardians appointed by will,
but action under the section should not be taken until an en-
quiry has been made to ascertain whether the guardian had
any property of the minor in his possession and control,
which he is withholding and for which he is accountable.*

*Appeal under clause 10 of the Letters Patent
from the judgment of Mr. Justice Abdul Raof, dated
12th May 1925.*

L. C. MEHRA, for Appellant.

NAWAL KISHORE, for Respondent.

JUDGMENT.

BROADWAY J.

BROADWAY J.—The appellants in these two connected Letters Patent Appeals, Damodar Das and Mangat Rai, were appointed executors under a will executed by Vaishno Das on the 17th March 1917. From the terms of the will it is clear that these two persons were also appointed guardians of the property and persons of the testator's minor children. It has been urged that the provisions of the Guardians and Wards Act do not apply to guardians appointed by will. I agree, however, with the learned Judge in Chambers that the provisions of the Guardians and Wards Act apply to such guardians and that action can be taken in regard to them under sections 39, 41

(3) and 45. It seems to me, however, that before taking action under section 45 of the Act the Court should make an enquiry in order to ascertain whether such guardians had any property of the minors in their possession and control which they were withholding and for which they were accountable. It appears that no real enquiry was made by the Court of first instance in this case. So far as Damodar Das, appellant, is concerned, it is clear that he has been deliberately avoiding appearance in Court and has conducted himself contumaciously throughout. In these circumstances an enquiry as far as he was concerned was not possible, and the Court was right in proceeding to deal with him under section 45 of the Act, I would therefore dismiss his appeal with costs.

The case of Mangat Rai, however, is on a different footing. He has been appearing regularly throughout the proceedings and has filed in Court such accounts and documents as he said were in his possession. He has also stated that the account books of his co-guardian Damodar Das contain a full and complete account of their dealings with the estate of the minors, and repeatedly asked that Damodar Das's account books should be brought into Court and examined. In these circumstances I would accept Mangat Rai's appeal and set aside the order directing him to pay a fine of Rs. 100. The Court should enquire into the allegations made by Mangat Rai and proceed under section 45 if after an enquiry it is considered necessary. He is entitled to his costs in this Court.

SIR SHADI LAL C. J.—I concur.

N. F. E.

SHADI LAL C.J.

*Damodar Das's appeal dismissed;
Mangat Rai's appeal accepted.*

1927

DAMODAR DAS

v.
MST. JATTI.

BROADWAY J.