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passed without jurisdiction, the applicant's remedy is to bring a suit to recover the costs. The question of hardship cannot be considered under section 622 of the Civil Procedure Code.

FARRAN, C. J.:—We are of opinion that a District Judge acting under section 23 of the Bombay District Municipal Act Amendment Act, 1884, is not a Court within the meaning of the word in section 622 of the Civil Procedure Code (Act XIV of 1882), and that this Court has no jurisdiction to revise his order refusing to set aside an election. (See *Jagannáth* v. *Rev. M. F. De Souza*[1].) For the same reason we cannot interfere with the order he has made that the applicant shall pay the actual costs incurred by the opponent. The circular order referred to (No. 62 at p. 33 of the Order Book) deals only with District Courts, Courts of Small Causes, Subordinate Courts, and Mámlatdárs' Courts. The District Judge in the present case is neither of these, and the order can have no application to him. He is merely a *persona designata*, and if he has jurisdiction at all to award costs, there is nothing to prevent him from awarding them on the scale he has adopted. On this point of jurisdiction we express no opinion, as his power to award costs has not been contested before us.

We discharge the rule with costs.

Rule discharged.

(1) P. J. for 1894, p. 87.

ORIGINAL CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

GORDHANDA'S JA'DOWJI, PLAINTIFF, v. HARIVALUBHDA'S BHA'IDA'S, DEFENDANT.*

1896. *July 3.*

Minor—Minority, period of, where guardian has once been appointed although no longer in existence—Indian Majority Act IX of 1875, *Sec.* 3—*Guardian and Wards Act VIII of* 1890, *Sec.* 52.

The defendant was sued upon a promissory note executed by him on the 24th August, 1892, he being at that time 19 years of age. Eight years previously, *viz.*

* Small Cause Court Reference, No. 20978 of 1895.

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on the 4th March, 1884, a guardian of his person and property had been appointed by an order of the High Court, but the guardian had been discharged on the 25th June, 1892, and at the time of the execution of the note sued on there was no guardian in existence either of his person or property.

Held, that having regard to the provisions of section 3 of the Indian Majority Act, IX of 1875, the defendant was still a minor at the date of the note.

CASE stated for the opinion of the High Court by Rustomji Merwánji Patell, Second Judge, under section 69 of the Presidency Small Cause Court Act (XV of 1882).

"1. This was an action on a promissory note for Rs. 501 dated the 24th August, 1892, and interest thereon Rs. 80-9-0.

"2. The defendant pleaded minority and the full payment of the promissory note. I held the defendant was of age at the making of the note, and allowing Rs. 209 only as payment proved, I passed a decree for Rs. 342, including interest and costs, contingent on the opinion of the High Court on the question of minority.

"3. The defendant was born on 20th August, 1873, or Shrávan Vad 13th, 1929. At the date of the execution of the note he was 19 years and 4 days old, but it was contended that he was a ward of the High Court, and till he completed his 21st year he should be considered a minor under section 3 of the Majority Act and section 52 of the Guardian and Wards Act of 1890.

"4. The following facts were proved :—

"(*a*) Under a decree of the High Court dated the 4th March, 1884, in the suit of *Harkisondás Pránjivandás* v. *Purshotam Pránjivandás*, one Parbhudás Govardhandás was appointed guardian of the person and property of the defendant (Exhibit No. 1).

"(*b*) Under an order of the High Court dated 5th May, 1890, one Rámdás Máneklál was on his application appointed guardian of the defendant's person in place of the said Parbhudás Gordhandás. By the same order the said Parbhudás was asked to hand over the property of the defendant to Mr. Watkins, who had been appointed receiver in the said High Court suit. Mr. Watkins is spoken of in that order as a receiver and not as guardian of the property of the minor (Exhibit No. 2).

"(*c*) On 26th June, 1891, the said Rámdás Máneklál was ordered to be discharged from his office as guardian of defendant's person upon his rendering accounts to the Master in Equity. He was subsequently discharged as such on the 25th June, 1892, on the Master passing his accounts as per certificate of that date (Exhibit No. 3). No other guardian of the defendant's person was thereafter appointed, and the defendant was then of the age of 18 years and ten months.

"(*d*) Defendant applied to the High Court by his affidavit dated 19th September, 1892, that Mr. Watkins, the receiver, should be ordered to hand over to him all his property. In paragraph 11 he stated that he had arrived at the age of majority and was of the age of 19 years and was sufficiently competent to manage his estate without the assistance of any receiver (copy affidavit put in by consent, Exhibit A). The High Court thereupon ordered on the 22nd October, 1892, that Mr. Watkins be discharged as such receiver and hand over the property of the defendant to him (Exhibit No. 5).

"6. The promissory note sued on having been executed on the 24th August, 1892, was, therefore, at a time when there was no guardian of the defendant's person or property. I was of opinion that the order directing Mr. Watkins, the receiver appointed under the Civil Procedure Code in the said High Court suit to take charge of the property of the defendant, did not constitute him a guardian of the minor's property (see section 52 of Act VIII).

"7. The defendant's solicitor relied on *Rudra Prokásh* v. *Bholánáth*[1] and *Birjmohun* v. *Rudra Perkash*[2]. These cases are based on the provisions of Bengal Act XL of 1858, which do not apply to us; and the ruling in the former case is not followed by the latter, the Court holding that it was clear, from section 3 of the Majority Act, that the disability of the minority only continued as long as the Court of Wards retained charge of the minor's property and no longer (see p. 949). *Yeknáth* v. *Warubái*[3] is based on Act XX of 1864 which does not apply to Bombay.

(1) I. L. R., 12 Cal., 612. (2) I. L. R., 17 Cal., 944.
(3) I. L. R., 13 Bom., 285.

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"8. Reading section 3 of the Majority Act as amended by section 52 of the Guardians and Wards Act (VIII of 1890), I was not prepared to hold, in the absence of any Bombay cases, that on account of the mere circumstance that a guardian has been once appointed of a minor's person or property before he has attained his 18th year, the disability of infancy lasts till the age of 21st, whether the original guardian continues to act or not. On the other hand, looking at the conduct of the defendant, the discharge of the guardian of his person on the 25th June, 1892, the statements of the defendant in his affidavit of the 19th September, 1892, and the consequent release of his property from the hands of the receiver, it would be inequitable to stretch a point in his favour.

"9. I now respectfully submit the following question for the opinion of their Lordships :—

"Whether under the above circumstances the defendant was a minor at the date of the execution of the note of the 24th August, 1892 so as to avoid his liability on the note passed by him."

Macpherson for the defendant :—He referred to the Indian Majority Act IX of 1875 ; the Guardian and Wards Act, 1890 ; *Yeknáth* v. *Warubái*(1) ; *Birjmohun Lál* v. *Rudra Perkásh*(2); *Rudra Prokásh* v. *Bholánáth*(3) ; *Khwahish Ali* v. *Surju Prasád*(4).

There was no appearance for the plaintiff.

FARRAN, C. J. :—The question referred for our opinion in this case should, I think, be answered in the affirmative.

Were it not for the doubt expressed in *Yeknáth* v. *Warubái*(1) I should have thought that the point was absolutely clear. The words of section 3 of the Indian Majority Act IX of 1875, in so far as they relate to this matter both in its original and amended form, are "Every minor of whose person or property (or of both) a guardian has been or shall be appointed by any Court of justice * * * shall * * be deemed to have attained his majority when he shall have completed his age of 21 years, and not before." The words added to that enactment by section 52 of Act VIII of 1890 only serve to elucidate its meaning and make it more clear

(1) I. L. R., 13 Bom., 285.
(2) I. L. R., 17 Cal., 944.
(3) I. L. R., 12 Cal., 612.
(4) I. L. R., 3 All., 598.

They explain that a guardian *ad litem* is not within the scope of the section, and show that the appointment of a guardian, in order to have the effect of extending the period of minority, must be made before the minor has attained the age of 18 years.

Now, in this case a guardian both of the person and property of the defendant has been appointed by the High Court by its decree of the 4th March, 1884, before the defendant attained the age of 18 years and the requirements of the section have been complied with. I can see no escape from that conclusion. The words of the section are free from ambiguity, and we have no warrant to vary its meaning by reading words into it which are not to be found therein, and thus to alter the expressed will of the Legislature.

This view is in accordance with the decision in *Rudra Prokásh* v. *Bholánáth* (1) and is not, I think, opposed to the ruling in *Birjmohun Lál* v. *Rudra Perkásh* (2). When that case is examined it will be found that the *ratio decidendi* is that there was no proof before the Court that a guardian of the defendant had been appointed by a Court of justice. The Court differed from the decision in *Rudra Prokásh* v. *Bholánáth* only in this that they considered the appointment of a guardian by a Collector not to be an appointment of a guardian by a Court of justice, a point not apparently taken in the former case. The ruling as to the defendant not being at the time of suit under the jurisdiction of the Court of Wards, and his majority not being extended by reason of his once having been so, was permissible under the section as it was then worded.

The wording of the section has by Act VIII of 1890, section 52, been altered in that respect. If it were allowable to have recourse to section 52 of Act VIII of 1890 to ascertain the intention of the Legislature in framing Act IX of 1875, the conclusion I should draw would be that it intended the effect of any appointment of a guardian to a minor and the assumption by the Court of Wards of the superintendence of his property to be the same, and that such effect should flow from the mere appointment of the guardian, or assumption of superintendence

(1) I. L. R., 12 Cal., 612.

(2) I. L. R., 17 Cal., 944.

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by the Court of Wards, without regard to the circumstance whether the appointment of a guardian or assumption of superintendence continued or not.

The view which I take of the section was also that adopted by the High Court of Allahabad in *Khwahish Ali* v. *Surju Prasád*(1). But we have been referred to a later case, *Pátesri Partáp Náráin Singh* v. *Champálál*(2) in which the same Court took the opposite view. The Court in the latter case would, I think, have come to a different conclusion had it had before it the language of section 52 of Act VIII of 1890.

It might have been sufficient to have dealt with this case upon its special facts, which show that the defendant continued to have a guardian until after he had attained the age of 18 years; but it is undesirable to have the law left in doubt (so far as this Presidency is concerned) upon this important point. I have, therefore, dealt with the case in its broader aspect.

STRACHEY, J.:—I am of the same opinion. I was at first impressed by the judgment of Sir John Edge, C. J., and Mr. Justice Knox in *Patesri Partáp Náráin Singh* v. *Champálál*(2) but upon consideration I think that that judgment proceeds not so much upon the terms of section 3 of Act IX of 1875 as upon a speculation or theory as to the object which the Legislature, in passing the section, had in view.

The language of the section is, however, too clear for such speculation to be admissible in applying it. Speaking generally, it provides that every minor of whose person or property, or both, a guardian "has been or shall be appointed" by a Court of justice before the minor has attained the age of 18 years shall be deemed to have attained his majority upon completion of the age of 21 years, and not before. And we should not be justified in reading into the section an exception that this provision shall not apply where the certificate of guardianship was subsequently cancelled.

If the intention of the Legislature in passing section 3 of the Act has not been fully effected by the language used, the remedy is in the hands of the Legislature itself. But the words, as they

(1) I. L. R., 3 All., 598. (2) All. Weekly Notes (1891), p. 118.

stand, appear to me to be clear. I agree with the Chief Justice that they have been made clearer by the amendment of the section by section 52 of Act VIII of 1890.

We answer the question in the affirmative. Costs costs in the case. This will leave the Small Cause Court the power to deal with them in its discretion.

Attorneys for the defendant:—Messrs. *Daftary and Fereira.*

ORIGINAL CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

VELJI HIRJI AND CO., CLAIMANTS, v. BHÁRMAL SHRIPÁL AND CO., ATTACHING CREDITORS.*

1896. August 7.

Consignor and consignee—Goods consigned to agent for sale on commission—Hundis drawn against goods and paid by agent—Railway receipts sent to agent—Equitable assignment of goods by consignor—Goods attached by judgment-creditor of consignor—Claim by agent—Priority—Civil Procedure Code (Act XIV of 1882), Sec. 280.

One Ukerda Punja at Viramgám consigned certain bags of seed to Velji Hirji and Co. at Bombay for sale on commission, and drew *hundis* against the goods for Rs. 3,200, which at his request Velji Hirji and Co. accepted and paid on receiving the railway receipts by post. The goods were to be sold on arrival on Ukerda Punja's account and the proceeds credited to him as against the advances made by the payment of the *hundis*. On the arrival of the goods at Bombay they were attached by Bhármal Shripál and Co., who had obtained decrees against Ukerda Punja.

Held, that Velji Hirji and Co. were entitled to the goods. They had made specific advances against the goods. Bhármal Shripál and Co. as attaching creditors occupied the same position as Ukerda Punja himself and had no better claim to the goods than he had, and if he had attempted to prevent the goods reaching the hands of Velji Hirji and Co., who at his request had made specific advances against them, he would have been restrained by injunction.

Held, also, that at the date of attachment the goods were in possession of Ukerda Punja by the railway company "on account of or in trust for" Velji Hirji and Co., in the sense in which that expression is used in section 280 of the Civil Procedure Code (Act XIV of 1882).

THIS was a case stated for the opinion of the High Court under section 69 of the Presidency Small Cause Court Act by

* Small Cause Court Suits Nos. 4713, 4714 and 4712 of 1896.