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*Baker J.*

therefore, that full effect should be given to the grant, and that defendant should be compelled to leave a passage 15 feet wide throughout his land as he has contracted to do. Consequently the decree of the lower appellate Court will be set aside, and the decree of the First Court restored, with costs throughout.

*Decree reversed.*

K. S. S.

## ORIGINAL CIVIL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice, and Mr. Justice Madgavkar.*

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*July* 30.

JALBHAI CURSETJI DRIVER (ORIGINAL PETITIONER), APPELLANT *v.* JERBAI HORMUSJI PALKHIVALA (ORIGINAL APPLICANT), RESPONDENT.*

*Parsis—Navjote ceremony—Right to perform—Natural father—Maternal grandmother—Guardianship proceedings—Order of single judge on Original Side—Whether appealable—Inherent jurisdiction of High Court.*

Among Parsis, the natural father of a minor daughter has a preferential right, over the maternal grandmother, to perform her Navjote or thread ceremony.

An appeal lies under the inherent jurisdiction of the High Court, from an order made by a single judge on the original side in respect of matters affecting a minor who is a ward of the Court.

*Quare*—Whether an appeal lies in such a case under clause 15 of the Letters Patent?

APPEAL from the order of Wadia J. on a Chamber Summons.

The minor Dinbai was a Parsi girl about nine years old. Her father (the petitioner) was married to Dinbai's mother in 1917. The mother died in 1929. Since her birth the minor used to reside with and was brought up by her maternal grandmother Jerbai (the respondent). After her mother's death Dinbai continued to reside with Jerbai.

After the mother's death, the petitioner, in April 1929, presented an application under the Guardians and Wards Act (VIII of 1890), for being appointed a guardian of the said minor and for directions as to her

*O. C. J. Appeal No. 35 of 1930 : Petition No. 97 of 1929.

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custody and maintenance. The said petition was adjourned into Court and in September 1929 a consent order was passed by Blackwell J. by which the petition was adjourned *sine die* and it was directed that the minor should stay for six months in a year with the petitioner and for six months with the respondent, and that the person who had the custody of the said minor for the time being should provide for her maintenance.

In June 1930 the petitioner desired to perform the Navjote or thread ceremony of the infant, who was at that time in the custody of the respondent, and asked her to allow him to perform the said ceremony. The respondent objected to the petitioner performing the ceremony and expressed a desire to perform the said ceremony herself.

On July 1, 1930, the respondent took out a chamber summons for an order that she should be allowed to perform the Navjote ceremony of the said minor. The father opposed this application and contended that he was entitled to perform the said ceremony according to the custom prevailing amongst the Parsis. He relied on two letters from Parsi priests to the effect that "the primary right to perform the 'Sudhra' and 'Kusti' ceremony of his child is that of the father."

On July 14, 1930, the summons was argued before Wadia J. who held that the respondent had the right to perform the said ceremony. During the course of his judgment the learned Judge observed:

"It is, however, a well-known principle in guardianship matters that the welfare and happiness of the minor should be the supreme consideration in the mind of the Court. Bearing the principle in mind, only as and by way of a guide, and having regard to the wishes of the minor and the very happy relations between the child and her grandmother, who has brought her up from infancy . . . I order that the ceremony should be performed by the respondent."

The petitioner, Jalbhai, the father, appealed from that order.

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*Sir Jamshed Kanga*, Advocate General, with *Banaji*, for the appellant.

*F. S. Taleyarkhan*, with *Jhaveri*, for the respondent.

BEAUMONT, C. J.:—This appeal raises the question, whether the father of an infant, or the maternal grandmother, ought to be allowed to perform the Navjote or thread ceremony, according to the Zoroastrian faith, in respect of the infant who is a ward of Court and whose parents were Parsis.

Now, the relevant facts are that the parents of the minor were married in 1917, and the wife died in 1929. During the lifetime of the wife, the minor lived a great part of the time with the wife's mother, who is the present respondent.

After the death of the wife, the father of the minor presented a petition in the matter of the Guardians and Wards Act, Act VIII of 1890, and in the matter of the infant, in which he asked for directions as to the custody and maintenance of the infant, and in September 1929 a consent order was made under which the petition was adjourned *sine die*, the infant was to live for six months of the year with the father and six months of the year with her grandmother, the respondent, the party having the custody of the minor during the period of six months was to maintain the minor, and the father was to pay and bear the school fees, and then there was to be liberty to apply.

The grandmother on July 1, 1930, took out this summons asking that she might perform the Navjote or thread ceremony, and that the petitioner should pay the costs of the summons. The matter came before Mr. Justice Wadia in Chambers, and, in the first instance, on July 14, it appears from a note with the papers, he gave directions that having regard to the

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wishes of the minor and having regard to the fact that the minor was being reared by her grandmother, the grandmother should perform the Navjote ceremony, that the principal consideration was the welfare of the minor and that it appeared that the welfare of the minor had been looked to by the grandmother.

The learned Judge subsequently gave more detailed reasons for his judgment, and I think that what influenced him was his interview with the minor. The minor apparently expressed a desire that the ceremony should be performed by her grandmother. The learned Judge refers to two letters from Parsi priests as to the right of the father to perform this ceremony, but says that as they were not annexed to an affidavit they were not evidence. The learned Judge was misinformed as to that, because the letters were annexed and exhibited to an affidavit and, therefore, were in evidence.

Mr. Taleyarkhan for the respondent takes the point, first of all, that no appeal lies in this matter having regard to section 47 of the Guardians and Wards Act, but, in my opinion, the answer to that is that the order of Mr. Justice Wadia was not made under that Act at all. In my view the Court, apart from clause 15 of the Letters Patent, has inherent jurisdiction to hear an appeal in a matter of this sort affecting a ward of Court. Therefore, I think, an appeal lies.

It is then said that this is a matter of discretion and that the Court of Appeal should not interfere with the learned Judge's discretion. It is to be remembered, in the first instance, that this child is a ward of Court. The issue of the petition asking for an order as to her custody and maintenance constitutes her a ward of Court. That being so, the Court must always consider, as the paramount question, the interest of the minor. But, in the peculiar circumstances of this case, I am unable

to see that the interests of the minor are in any way affected. The nature of the Navjote ceremony has been explained to the Court and it would appear that the ceremony is performed practically entirely by the priest. The desire of the father and the grandmother is to be allowed the privilege of paying for the ceremony, and, I suppose, making arrangements as to the date and place and so forth. But, so far as the welfare of the minor is concerned, it seems to me that as long as the ceremony is performed, it will not matter to her by whom it is paid for or who arranges the date and place of the ceremony.

The way the case is put on behalf of the father is this. He says that he is the natural guardian of the child and that no order in these proceedings has deprived him of this natural guardianship. He says the right to perform this ceremony is a right, which would naturally fall to the father, and that seems to be so, because there are the two letters from the Parsi priests saying that the father would be the proper person to perform the ceremony, and in paragraph 8 of the respondent's affidavit on this appeal, she does not really dispute that that would be so. No doubt, circumstances might occur and be disclosed in the evidence, which would justify the Court in the interests of the minor, in depriving the father of his right to perform the ceremony, but I have not been referred in this case to any evidence suggesting that the father is not a proper person to perform the ceremony. It is, of course, very unfortunate that the parties did not adopt the suggestion of Mr. Justice Wadia that the matter should be settled by both the father and the grandmother sharing in arranging for this ceremony. The parties, however, not having come to terms, and this being a matter of sentiment between them, they have pressed to have the strict rights of the

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*Beaumont C. J.*

parties determined, and in my view, the father is the person, who has the strict right to perform this ceremony, and there is nothing in the evidence to justify us in depriving him of this right. I should generally be slow to interfere with the exercise of the discretion of the Judge relating to a ward, but in this case the learned Judge did not, in my opinion, address his mind to the right point. He only considered the interests of the minor, which seem to me not to be affected and he did not consider whether there was any case for depriving the father of his right. In my view the appellant is entitled to perform the ceremony, but I hope that he will arrange to let the grandmother attend and take such share as he considers proper. As the father does not ask for costs, there will be no order as to costs.

MADGAVKAR, J. :—On the whole, I agree. An appeal does not, in my opinion, lie under the Guardians and Wards Act, and I am doubtful if Mr. Justice Wadia's judgment is a judgment within clause 15 of the Letters Patent and appealable. But the Court can, in its inherent jurisdiction and following the practice on the Original Side, consider the propriety of the order appealed against.

On the merits of that order, the father being the natural guardian and not having been set aside, and being admittedly the usual person to perform the ceremony, previous dissensions between him and the deceased mother of the child are not, in my opinion, sufficient, even when coupled with the grandmother's long guardianship *de facto*, to override his right to perform the ceremony which he desires. And as both the parties are unwilling, even in the interests of the child, to join hands, I agree with the order proposed by my Lord, the Chief Justice.

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*Madgavkar J.*

Each party to bear his own costs.

Attorneys for appellant: Messrs. *Lam & Co.*

Attorneys for respondent: Messrs. *J. S. Rutnagar & Co.*

*Order accordingly.*

B. K. D.

## ORIGINAL CIVIL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice, and Mr. Justice Baker.*

1930
*August 5.*

THE CALICO PRINTERS' ASSOCIATION LTD. (ORIGINAL PLAINTIFFS), APPELLANTS *v.* A. A. KARIM & BROS. (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Civil Procedure Code (Act V of 1908), Order VI, rule 14, Order XXIX, rule 1—Plaint—Joint Stock Company—Power of Attorney—Plaint signed by Attorney—Practice and Procedure.*

Under Order VI, rule 14 of the Civil Procedure Code, 1908, a pleading must be signed by a party. In cases where the party is a *company*, it can authorise some person to sign a pleading on its behalf.

Where a company does not so authorise any person, it can sign a pleading through its Secretary, Director or other Principal Officer under Order XXIX, rule 1, of the Code.

APPEAL from the order of Blackwell J. on a Chamber Summons.

The plaintiffs were a company incorporated in England and registered in India under section 277 of the Indian Companies Act, 1913.

On March 29, 1928, the plaintiff company executed a power of attorney in favour of Mr. C. M. Eastley, a partner in the firm of Messrs. Little & Co., Solicitors, Bombay.

The said Power of Attorney, *inter alia*, contained the following provision:—

"To commence, prosecute, enforce, defend, answer or oppose all actions and other legal proceedings and demands in the Bombay Presidency concerning the infringement of any designs registered in India and if thought fit to adjust, settle or compromise any such proceedings. . . To sign pleading and to execute and do all such other deeds, instruments, acts and things whatsoever which may be necessary or proper in relation to the matters aforesaid."

*O. C. J. Appeal No. 52 of 1929: Suit No. 700 of 1929.