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clearly in error in allowing his mind to be influenced by the fact that the minor was a consenting party to the petition for withdrawal of the suit. That circumstance was wholly irrelevant. It is because of a minor's immaturity of judgment that the Court interferes to safeguard his interests and protect him, even against his own acts and admissions. Then as to Monji Lal's conduct, it may be true that no fraudulent motive was present to his mind, but that would not necessarily suffice to conclude the minor and to debar him of all remedy. Whether the guardian had or had not received verbal assurances that the defendants would pay what was justly due, he was grossly negligent of the minor's interests in withdrawing the suit unconditionally and without any writing by which the defendants would be bound. Caution was all the more needed after the defendants had through their pleaders recorded on the petition that they did not admit its contents. The best that can be said for Monji Lal is that he was a credulous simpleton, and grossly neglected the most ordinary precaution for the protection of the minor. Against such conduct as his, a minor is entitled to invoke the assistance of a Court of equity either by an application for review of judgment or by separate suit. As remarked by Lord Hardwick in *Gregory* v. *Molesworth* (1), the infant has such a remedy when either gross *laches* or fraud and collusion appear in the next friend.

This case may not strictly come within the terms of s. 462 of the Code of Civil Procedure, because it is not proved that the defendants entered into any agreement or compromise with the next friend of the infant, but it is within the scope of the general principle enunciated in Story's Equity Jurisprudence, s. 1353: "In all cases where an infant is a ward of Court, no act can be done affecting the person or property or state of the minor, unless under the express or implied direction of the Court itself." And, as was observed by Scott, J., in the case of *Karmali Rahimbhoy* v. *Rahimbhoy Habibbhoy* (2), "a suit relating to the **[738]** estate or person of an infant and for his benefit has the effect of making him a ward of Court." In the result we direct that the Rule be made absolute, and that the case of the minor plaintiff be restored to the file and be tried on the merits, the mother of the minor being substituted as his next friend.

We do not interfere with the order discharging the Court of Wards from the case with costs.

Rule made absolute.

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29 C. 738.

APPELLATE CIVIL.

Before Mr. Justice Hill and Mr. Justice Brett.

ABDUL SERANG v. PUTEE BIBI.* [July, 1902.]

Mahomedan Law—Distant kindred—Relation, who is neither a sharer nor a residuary—Great-grandson of the brother of the grandfather of the deceased—Probate and Administration (Act V of 1881)—Letters of Administration.

According to Mahomedan law, the term 'distant kindred' includes all relations, who are neither sharers nor residuaries; therefore a great-grandson of

* Appeal from Original Decree No. 46 of 1902, against the decree of F. E. Pargiter, Esq., District Judge of 24-Pargunas, dated the 21st December 1901.

(1) (1747) 3 Atk. 626. (2) (1888) I. L. R. 13 Bom. 137.

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the brother of the grandfather of the deceased comes within the term "distant kindred."

ABDUL SERANG, petitioner, appealed to the High Court.

This appeal arose out of an application for Letters of Administration of the property of one Mussamat Khur Banu Bibi, deceased. The petitioner alleged that the said Khur Banu Bibi died on the 15th October 1900, leaving certain moveable properties; that his mother was the granddaughter of the brother of the grandfather of the deceased, who had no other relation besides the petitioner. The petition was opposed by Mussamats Wahedunnisa Bibi and Putee Bibi, who did not admit that Abdul [739] Serang was a relation of the deceased, and also contended that granting that relationship to be true, he was not an heir according to Mahomedan law. The District Judge of the 24-Parganas, Mr. F. E. Pargiter, having held that the petitioner was not one of the distant kindred, rejected his application.

Moulvi *Shamsul Huda* for the appellant.

Moulvi *Mahomed Tahir* for the respondent.

HILL AND BRETT, JJ. We think the learned District Judge has fallen into the error, which more than one writer on Mahomedan law have referred to in their works, of supposing that the "distant kindred" are restricted to the four classes, who are usually enumerated as primarily standing in that relation to the deceased. We find, however, in Mr. Rumsey's work on the Mahomedan Law of Inheritance, which is a work of some authority, as well as in Baillie, which is also authoritative, that the right of inheriting extends to the whole kindred of the deceased, and that it is an error to suppose that the right is limited to certain degrees or classes of relations. This observation Mr. Rumsey makes in a note to a passage on page 12 of his work, where he defines the "distant kindred" as including all relations, who are neither sharers nor residuaries. The appellant is not only a relation, but is a near relation of the deceased; and, in our opinion, he comes within the definition which we have just referred to and which Mr. Rumsey derives from an authoritative Mahomedan source.

That being so, the order appealed against must be set aside and the case remanded to the Court below for trial on its merits.

Costs will abide the result.

Appeal allowed. Case remanded.

29 C. 740.

[740] *Before Mr. Justice Prinsep and Mr. Justice Hill.*

GOVINDA HAZRA *v.* PROTAP NARAIN MUKHOPADHYA.*

[23rd June, 1902.]

Evidence Act (I of 1872), s. 90—Ancient document, presumption as to—Genuineness of signature in issue—Presumption not excluded, but has to be rebutted.

It is in the discretion of a Court whether it will raise the presumption in favour of a document for which s. 90 of the Evidence Act provides, but this discretion is not to be exercised arbitrarily: it must be governed by principles, which are consonant with law and justice. And while on the one hand great

* Appeal from Appellate Decree No. 485 of 1899, against the decree of H. E. Ranson, Esq., District Judge of Midnapur, dated the 25th of November 1898, affirming the decree of Babu Mohendra Nath Dutt, Munsif of Ghatal, dated the 8th of December 1897.