been improperly ordered to pay a sum of money which was not due, there can be no possible difficulty in their refunding that amount to him notwithstanding the absence of any special provision of the law authorizing them to do so.

1873

IN THE MATTER OF THE PETITION OF MOULVIE SYUD ZOYNOODDEEN HOSSEIN KHAN.

Rule discharged.

ORIGINAL CIVIL.

Before Mr. Justice Macpherson.

S.M.GOLAUPMONEE DOSSEE v. S.M. PROSONOMOYE DOSSEE.

1873
July. 14.

Suit in Formâ Pauperis—Next Friend a Pauper—Infant.

A suit can be brought in *forma pauperis* by a next friend who is also a pauper.

THIS was a suit in *formâ pauperis*, and was instituted by the father of the plaintiff as her next friend, she being an infant.

Mr. *Bonnerjee*, for the defendant, took a preliminary objection that a suit in *formâ pauperis* could not be brought by a next friend. He referred to Macpherson on Infants, 377, and an *Anonymous case* (1). Such is the practice in England. By the practice of the Supreme Court, no suit could be brought on behalf of any infant without leave previously obtained from the Court on special affidavit stating the circumstances and reasons that it was for the benefit of the infant that the suit should be instituted; see Smoult and Ryan's Rules and Orders, vol. II, pp. 4 & 130. Act VIII of 1859 never intended that a pauper suit should be brought by a next friend.

Mr. *Piffard*, for the plaintiff, contended that, if that were so, it would create great hardship to infants desirous of suing in *formâ pauperis*: it was never intended that a party should be in a worse position because he is an infant, than he would have been, if he had had been of full age. If the present plaintiff had not been an infant, she could have sued in *formâ pauperis*, but if the present objection is good, she could not sue. The privilege to sue in *formâ pauperis* is the privilege of the person entitled to

(1) 1 Ves., Jun., 409.

1873

GOLAUPMONEE DOSSEE v. PROSONOMOYE DOSSEE.

sue. The plaintiff would not be liable to give security for costs, nor would the next friend, as he would not be liable for anything for which the plaintiff was not liable. [MACPHERSON, J.—That would be allowing him to sue in *formâ pauperis*—see Daniell's Chancery Practice, 4th ed., p. 39; *Lindsey* v. *Tyrrell* (1).] Then the infant could not sue at all. The Lord Chancellor in that case says there must be some means of enabling the infant to assert her rights. How can she do so except by her next friend?

Mr. *Bonnerjee* in reply.—By the authorities the rule seems to be that at any rate special circumstances must be shown for allowing such a suit to be brought.

Mr. *Piffard* asked to examine the father of the plaintiff. He was accordingly called and examined.

Mr. *Bonnerjee* submitted on the evidence that no special circumstances had been made out. The evidence that he was a pauper was not satisfactory. Unless it is shown that he is a pauper, and that he knows no person of substance whom he can get to bring the suit for him, he ought not to be allowed to sue.

Cur. adv. vult.

MACPHERSON, J., said that he thought that on the authorities in England a suit on behalf of a pauper by a next friend who was also a pauper could be brought.

Attorney for the plaintiff: Mr. *Leslie*.

Attorney for the defendant: Baboo *P. C. Mookerjee*.

(1) 24 Beav., 124; S. C. on appeal, 2 DeGex & Jones, 7.