

The petitioner having, therefore, failed to make out any ground for the relief sought, the rule must be discharged, and he must pay Captain Corkhill's costs.

Attorneys for applicant: Messrs. *Morgan & Co.*

Attorney for Captain W. Corkhill: Mr. *Farr.*

C. E. G.

1895  
IN THE  
MATTER OF  
CORKHILL.

### PRIVY COUNCIL.

ASHARFI LAL (PLAINTIFF) *v.* DEPUTY COMMISSIONER OF BARA  
BANKI FOR THE COURT OF WARDS (DEFENDANT.)

P. C. \*  
1895  
February 5.

[On appeal from the Court of the Judicial Commissioner of  
Oudh.]

*Right of suit—Suit against the Collector as Agent for the Court of Wards—  
Disqualified owner—Act XXXV of 1858 (Care of the Estates of Lunatics),  
section 11—Act XVII of 1876 (Oudh Land Revenue), sections 175 and  
176—Civil Procedure Code, sections 440, 464.*

A decree was made against a Deputy Commissioner, as Agent for the Court of Wards, for a debt due from a proprietor, whose estate had come under the charge of that officer in virtue of an order made by the District Court under Act XXXV of 1858, the debtor having been found to be of unsound mind and incapable of managing his affairs.

The Judicial Commissioner, having called for the record under section 622 of the Civil Procedure Code, set aside the decree, which had been affirmed on appeal. He was of opinion that the suit should not have been brought against the Deputy Commissioner in the above character, but would only lie against a manager appointed as Act XXXV of 1858 directed, or else against a guardian. This judgment having gone upon a technicality, not well founded, was reversed, and the original decree was restored.

APPEAL from a decree (8th July 1889) of the Judicial Commissioner, setting aside, under section 622 of the Civil Procedure Code, a decree (7th March 1889) of the District Judge of Lucknow, which affirmed a decree (31st August 1888) of the Subordinate Judge of Bara Banki.

The appellant claimed upon eleven money bonds executed to him by Ehsan Husain Khan, proprietor of Tanda Mauza in the pergunna and tehsil of Fattehpur, district Bara Banki, for principal and interest at 24 per cent. between the 18th May

\* *Present:* LORDS WATSON, HOBHOUSE, MACNAGHTEN, SHAND and DAVEY and SIR R. COUCH.

1895 1883 and the 6th February 1885, all payable before the 30th  
 ASHARFI LAL January 1888 when the suit was brought. Rs. 4,927 were  
 v. decreed. The defendant was the Deputy Commissioner, who, as  
 DEPUTY COM- Collector of the District, had taken charge, on the 9th April  
 MISSIONER OF 1886, on behalf of the Court of Wards, of the estate of Ehsan  
 BARA BANKI. Husain Khan, in virtue of an order dated 17th November 1885  
 made by the Civil Court within whose jurisdiction Ehsan  
 Husain resided. That order, under section 11 of Act XXXV of  
 1858 (for the better provision for the care of the estates of lunatics)  
 directed the Deputy Commissioner to take charge of the estate  
 of Ehsan Husain, who had been adjudged, upon enquiry, to be  
 of unsound mind, and to be incapable of managing his affairs.  
 That section is as follows :—

“If the estate consist in whole or in part of land, or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a manager of the property and a guardian of the person of the lunatic. All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior revenue authorities.”

The provisions of sections 166, 167, 175 and 176 of Act XVII of 1876, the Oudh Land Revenue Act, are as follow :—

“Section 166.—The jurisdiction of the Court of Wards shall extend to the care and education and to the management of the property of the person subject thereto,

“167.—The Court of Wards may appoint managers of the property of disqualified proprietors, and if such proprietors be minors, idiots, or lunatics, may appoint guardians for the care of their persons, and may remove and control such managers and guardians.

“175.—All disqualified proprietors whose property is in charge of the Court of Wards shall sue and be sued by and in the name of the guardians where guardians have been appointed.

“Provided that no such suit shall be maintained or defended by any guardian without the sanction of the Court of Wards.

“176.—If no such guardian has been appointed, the disqualified proprietors shall sue and be sued by and in the name of the Court of Wards.”

It was stated in the plaint that promises had been made by Ghazafar Ali Khan, *sarbarakar* of the estate, and in the judgment of the Judicial Commissioner in this suit it appeared that this person had been appointed manager of the property as the Act XXXV of 1858 required.

The defence was that Ehsan Khan was, at the time when he executed the bonds, of unsound mind and incapable of contracting. On an issue as to this, the defence was negatived, and he was found to have been capable of managing his affairs.

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On an appeal to the District Judge this decision was affirmed; no objection having been raised in either of the lower Courts that the defendant did not properly represent the disqualified proprietor, and was not the person to be sued as representing the Court of Wards.

The Judicial Commissioner, on a petition by the defendant putting forward grounds of material irregularity in the conduct of the case and in the admission of evidence, called for the record under section 622 of the Civil Procedure Code. He found none of these grounds to be tenable. He considered, indeed, that the lower Courts had erred in their view of the evidence as to Ehsan Husain's state of mind; but held that admissible evidence had been given upon which they had a right to decide, and that there was in the petition nothing to cause him to interfere. He was, however, of opinion that, seeing that Ghazafar Ali Khan had been appointed to be the manager of the estate, in accordance with Act XXXV of 1858, and that, as he found to be the case, the mother of Ehsan Husain was his guardian, the Deputy Commissioner, as Agent for the Court of Wards, was not the person to be sued under the provisions of Act<sup>3</sup>XVII of 1876. He added that if Ehsan Husain himself had been sued, then, under the provisions of the Civil Procedure Code, sections 440 to 463, it would have been necessary to appoint a guardian, referring also to section 464 preventing the application of the above sections to a person of unsound mind for whose person or property a guardian, or manager, had been appointed by the Court of Wards.

Mr. *H. Cowell* for the appellant.—The order of the 17th November 1885 having been made by the Civil Judge under Act XXXV of 1858, and charge having been taken of the estate under it by the Deputy Commissioner, the Courts in the District rightly treated the latter as Agent for the Court of Wards, and as representing the estate liable for the debt. The defendant was the right person to be sued in the character of Collector. The

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Judicial Commissioner was wrong in assuming that a guardian had been appointed, and there had been material irregularity upon which he could act under section 622. The disqualified proprietor was rightly sued in the name of the Court of Wards under section 176 of Act XVII of 1876. There was no evidence on which the lower Courts could have done otherwise than permit the suit to proceed; and if, in consequence of the decree having followed, the Judicial Commissioner had been right under section 622 in making an order, it should have been one of remand and not of dismissal of the suit.

Mr. *J. H. A. Branson* for the respondent.—Under section 175 of Act XVII of 1876 all disqualified proprietors whose property was in charge of the Court of Wards were to be sued by, and in the name of, their guardians, where guardians had been appointed. It was stated that the Deputy Commissioner had appointed Ghazafar Ali Khan to be manager, or *sarbarakar*, and if, as the Judicial Commissioner believed, a guardian had been appointed to Ehsan Husain, the disqualified proprietor, he was right in deciding that this suit had been wrongly brought against this defendant. A statement had been made, but was not on the record, that Ehsan Husain's wife, not his mother, was appointed guardian. The Appellate Court, it might be argued, was right in holding that the Courts below had acted with irregularity in the exercise of their jurisdiction in making a decree against the defendant without ascertaining whether he was the proper person to be sued, and in setting aside the decree on its appearing that he was not.

Mr. *H. Cowell* was not called upon to reply.

Their Lordships' judgment was given by

Lord Hobhouse.—The judgment appealed from appears to turn upon a pure technicality. The appellant had lent money to Ehsan Husain Khan on the security of certain bonds. Ehsan Husain subsequently became a lunatic, and was so declared by an order of Court of the 17th November 1885, and his estate was declared to be under the Court of Wards, and was placed under the charge of the Deputy Commissioner of Bara Banki. In other words, it became subject to the administration of the Court.

of Wards, and the Court of Wards appointed a manager. The appellant brought a suit in 1888 against the Deputy Commissioner for the recovery of the money lent. The claim was partially decreed by the Sub-Judge of Bara Banki, and that decree was affirmed on appeal by the District Judge of Lucknow. No further appeal was, as of right, open to the defendant, but he applied to the Judicial Commissioner to revise the case under the terms of section 622 of the Civil Procedure Code of 1882, on various grounds set forth in his application. All the objections taken were overruled by the Judicial Commissioner, and are not now insisted upon. But the Judicial Commissioner took a new objection of his own, and held that the first Court had no jurisdiction to try the case. He said: "The Court of first instance had no jurisdiction to try this case against the Court of Wards, because a manager, Ghazafar Ali Khan, having been appointed by the Collector, either in his general capacity or as Court of Wards, he was the proper person to be so sued on behalf of the lunatic, *vide* sections 11 and 14, Act XXXV of 1858, or else the guardian of the lunatic's person, who was his mother, ought to have been so sued."

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There seems to have been some confusion in the mind of the learned Judge between a "manager" and a "guardian." The Oudh Land Revenue Act (Act XVII of 1876) relied upon by him enacts (sections 175 and 176): "All disqualified proprietors whose property is in charge of the Court of Wards shall sue and be sued by and in the name of their guardians, where guardians have been appointed: provided that no such suit shall be maintained or defended by any guardian without the sanction of the Court of Wards. If no such guardian has been appointed, the disqualified proprietors shall sue and be sued by and in the name of the Court of Wards." There is nothing said about a manager.

The learned Judge puts the objection in the alternative by saying: "Or else the guardian of the lunatic's person, who was his mother, ought to have been so sued." But there was no evidence at all of the mother being the guardian of the lunatic's person. Their Lordships are now told by Mr. Branson, on behalf of the defendant, that in fact the wife of the lunatic—not the mother as the learned Judge supposed—was appointed guardian.

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But this fact has never been put upon the record, and cannot therefore be accepted here. But even supposing that the wife was appointed guardian, and that she was guardian at the time the decree of the first Court was made, still the fact remains that the appellant had made party to the suit the Court of Wards, the authority which had the property of the lunatic under its control, and which would have to answer a decree if a decree were made. Even if the guardian were a party, it would not be the guardian who would have to satisfy the decree; the guardian would have to go to the Court of Wards and get the funds to pay with. It is not suggested that the suit was not fully tried out upon the merits, or that any other line of defence could have been raised if the guardian had been party to the suit. The ground, therefore, on which the Judicial Commissioner reversed the decrees of the lower Courts seems to have been of the very flimsiest character, even if it had good technical grounds to go upon, which it had not. Their Lordships will therefore recommend Her Majesty to reverse the Judicial Commissioner's decree, and to restore the decrees of the District Judge. The respondent must pay the costs of the application to the Judicial Commissioner to revise the case, and the costs of this appeal.

*Appeal allowed.*

Solicitors for the appellant: Messrs. *Barrow & Rogers.*

Solicitor for the respondent: *The Solicitor, India Office.*

C. B.

## APPELLATE CIVIL.

*Before Mr. Justice Macpherson and Mr. Justice Banerjee.*

GYANUND ASRAM (OPPOSITE-PARTY) v. BEPIN MOHUN SEN  
 (PETITIONER).\*

1895  
 March 8.

*Appeal—Civil Procedure Code (Act XIV of 1882), sections 629, 536, 538 and 591—Order granting a review in a suit of Small Cause Court nature valued at less than Rs. 500.*

In a suit of a nature cognizable by Small Cause Court and valued at less than Rs. 500, an order granting a review was passed by the Appellate Court.

\* Appeal from Order No. 195 of 1894, against the order of J. Knox-Wight, Esq., District Judge of Hooghly, dated the 10th of March 1894.