

prosecution of the case. Upon that the plaintiff applied for time to get the sanction of the Court of Wards, and time was given him and on two subsequent occasions further time was given that he might get the sanction of the Court of Wards. Ultimately the time was enlarged until the 14th of August, and on the 14th of August, there being nothing said in contradiction of the letter of the 28th of May, the Subordinate Judge ordered that the case should be struck off the file. It appears to their Lordships not only that he had jurisdiction to strike the case off the file, but that he was quite right in doing so. He had before him a suit which, however lawfully instituted, was by law incapable of being prosecuted without a sanction, which the plaintiff was unable to obtain.

Their Lordships therefore are of opinion that this appeal should be dismissed with costs; and they will humbly advise Her Majesty in accordance with that opinion.

Appeal dismissed.

Solicitors for appellant: Messrs. *Watkins & Lattey*.

Solicitors for respondent: Messrs. *T. L. Wilson & Co.*

C. B.

GAUR MOHUN CHAKERBATI (APPELLANT) AND TARASUNDERI DEBI (RESPONDENT).

P.C.*
1889

November
23.

[On petition referring to an appeal from the High Court at Calcutta.]

Privy Council, Practice of—Procedure—Circumstances and terms of substitution of an appellant.

An appellant, after the transmission of his appeal to England, obtained leave in the High Court to withdraw it. The appeal involved the rights of a minor, party to the suit, whose mother and guardian obtained an order for her to be substituted for the withdrawing appellant, on the terms that she should give security to the satisfaction of the High Court for costs already ordered, and should undertake to abide by any order as to general costs.

THIS was a petition preferred by Bamasunderi Debi, widow of the late Dwarkanath Chakerbati, who died in January 1886,

* *Present*: LORD ASHBOURNE, LORD HOBHOUSE, SIR B. PEACOCK, and SIR R. COUCH.

1889
BISENWAR
ROY
v.
SHOSHI
SIKAR
ESWAR
ROY.

1889
 GAUR
 MOHUN
 CHAKRABARTY
 v.
 TARASUN-
 DERI DEBI.

leaving also another widow, the respondent Tarasunderi Debi. The petitioner asked to have her name, or that of her adopted son, Debender Nath Chakrabarti, through her as his guardian, substituted in the abovenamed appeal for that of the appellant, Gaur Mohun, who after the transmission of the record to England had applied to the High Court for leave to withdraw.

The appeal raised the question whether Dwarkanath had, by his will, given to the petitioner the power which she had purported to exercise in adopting Debender Nath. The execution of the will was denied by Tarasunderi, by whom Dwarkanath had a son who survived him, but this son had since deceased. Probate of the will, having been granted under Act V of 1881, was afterwards, on 23rd April 1888, revoked.

The appellant Gaur Mohun, on 17th February 1888, had obtained a certificate giving leave to appeal, and the petitioner now represented the injury that would be caused to the minor should the appeal be discontinued. The petition set forth that an application had been made on the 5th June 1889 to the High Court for leave to substitute the petitioner Tarasunderi, either as executrix appointed by the will or as guardian of the adopted minor, Debender Nath. This, however, had been refused, on the ground that it was for their Lordships, and not for the High Court, to dispose of the matter.

Mr. R. V. Doyne supported the petition.

Mr. T. H. Cowie, Q.C., appeared for the respondent, Tarasunderi.

Their Lordships' judgment was that the petitioner ought to be substituted for the withdrawing appellant on the terms that she gave security to the satisfaction of the High Court for the costs already incurred, and undertook to abide by such order as might be made as to the general costs.

Solicitor for the petitioner: Mr. G. Stevens.

Solicitors for the respondent: Messrs. Sanderson, Holland, & Adkin.