

ORIGINAL CIVIL.

Before Mr. Justice Macpherson.

IN THE MATTER OF BITTAN (AN INFANT).

*Guardian, Appointment of—Infant—Power of High Court—Application by
Petition without Suit.*

1877
April 12
5 May 2.

On an application made on petition without suit for the appointment of a guardian of the person and property of an infant, the Court Receiver was appointed Receiver, and the property was ordered to be handed over to him with liberty to him to sell it and invest the proceeds in Government Paper, and the matter was referred to the Judge in Chambers for enquiry as to the proper person to be appointed guardian.

APPLICATION on petition for the appointment of a guardian.

The petition of Diljan Bye, described as the head of the Mahomedan dancing girls or Byes in Calcutta, and Bebeejan Bye, one of the dancing girls or Byes, stated, that Suddun Bye, the mother of the infant, died, about four years ago, in Calcutta, leaving the said infant, a sister named Byjan, and also certain personal property; that up to the time of her death she and her sister lived in the same house as members of a joint family, and both of them were unmarried and carried on the profession of Byes or dancing girls; that on the death of Suddun Bye, her sister took possession of all the property, and supported the said infant up to the time of her death; that the sister died on 20th May, 1876, in Calcutta, leaving the said infant, and an aged grandmother, Chotti Bebee, and also leaving property and effects within the local limits of the jurisdiction of the High Court to be administered to; that on the death of Byjan, Chotti Bebee, her grandmother, took possession of all her estate and effects, and the estate and effects left by Suddun Bye, and took charge of the infant, and fed and clothed her up to the time of her death in October, 1876; that the infant, on the death of her mother and aunt, became entitled to certain personal property of the value of about Rs. 4,000 or 5,000, which, at the death of the said Chotti Bebee, came into the possession of the petitioners, who, since the

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death of Chotti Bebee, had maintained the infant; that the said infant was of the age of four years, and had no relatives or next-of-kin whatever; that being of tender years, the said infant could not take charge of or manage her property, and that the petitioners were not willing to take upon themselves any further risk by taking charge of the property without an order of Court appointing them guardians of the person and property of the said infant.

The petitioners prayed for an order appointing them guardians of the infant's person and property.

Mr. *Trevelyan* for the petitioners. — [MACPHERSON, J.— There being no suit, has the Court power to make such an order?] It is submitted it has. The power which the Court has under the Charter of 1865, s. 16, is the power which the Supreme Court had. That Court had the power of the Court of Chancery in such matters; see *Sibson on Infants*, 223; *Daniell's Chancery Practice*, 1189 and 1190. It appears from these authorities that the Court of Chancery has power to appoint a guardian on petition without suit. The rules of the Supreme Court on the matter refer to petitions generally without any reference to any suit; see *Smoult and Ryan's Equity Rules*, 170. [MACPHERSON, J.—The question is what was the practice of the Supreme Court at the time the High Court was instituted.] See *In the matter of Ann Butler* (1), and *Ex parte Lokecaunt Mullick* (2).

Cur. adv. vult.

The Court mentions that the order should be to refer it to the Judge in Chambers to enquire whether the petitioners, or any other person to be named, are proper persons to be guardians of the child; and that the petitioners do hand over the property in their hands to the Court Receiver, who is appointed the Receiver in this matter, with liberty to the Receiver to sell the property and invest the proceeds in Company's Paper. Costs to come out of the estate.

(1) *Morton's Dec.*, 262.

(2) *Morley's Dig.*, Vol. II, 42.