1880

IN THE MATTER OF THE PETITION OF HURRO SUNDARI DABIA.

ting before the Registrar that the signature to the will was hers, the Registrar signed his name as attesting her admission, and apparently the other witness did the same. Now, if these persons signed their names in the presence of the testatrix as attesting her own admission that she had signed the will, we think that would be sufficient, as an attestation, to satisfy the requirements of the 50th section.

We have decided, therefore, to remand the case, in order that the Judge, by recalling the witness who has already been examined, Chunder Kishore, and also any other witnesses who were present, may satisfy himself upon this point, and determine the case accordingly.

We find that the view we now take was adopted by Mr. Justice Phear in *In the goods of Roymoney Dossee* (1).

As the appellant did not raise this contention in the Court below, and as upon the materials now before us she would not be entitled to succeed, we think that the objector should have his costs in this Court.

Both parties will be at liberty to adduce fresh evidence bearing upon the question which we direct to be tried.

Case remanded.

Before Mr. Justice Pontifex and Mr. Justice McDonell.

IN THE MATTER OF THE PETITION OF NAZIRUN.

MUHAMDEE *v.* NAZIRUN.*

1880
March 17.

Guardian and Minor—Application for Certificate—Grounds for Refusal—Right of Appeal—Act XL of 1858, *s.* 28.

An application for a certificate under Act XL of 1858 (which, if successful, would, in effect, prolong the minority of an infant from eighteen to twenty-one), should not be granted when the alleged minor is admittedly on the point of attaining the age of eighteen, unless under particular circumstances, as where very great weakness of mind is proved, or where it is shown that there is some absolute necessity for making such order.

* Appeal from Order, No. 258 of 1879, against the order of J. F. Brown, Esq., Judge of Patna, dated the 15th August 1879.

(1) I. L. R., 1 Calc., 150.

1880

IN THE MATTER OF THE PETITION OF NAZIRUN.

Any person who, being a party to proceedings taken under Act XL of 1858, is injuriously affected by an order passed thereon, is, under s. 28 of that Act, entitled to an appeal.

THIS was an application for a certificate under Act XL of 1858, made by one Nazirun, as guardian of her son, Tabaruck Hossein. The application was opposed by one Muhamdee Begum, who was a purchaser of several properties from Tabaruck Hossein, on the ground that the applicant' sson had already attained his majority. The son also appeared through a pleader and supported the opposition. It appeared from evidence adduced by the applicant that her son was under eighteen, although he would very shortly attain that age. The Judge of Patna granted the application.

From that order the objector appealed to the High Court.

Mr. *M. L. Sandel* and Moonshee *Mahomed Yusoof* for the appellant.

Mr. *C. Gregory* and Baboo *Saligram Sing* for the respondent.

The judgment of the Court (PONTIFEX and MCDONELL, JJ.) was delivered by

PONTIFEX, J.—We think that this is not a case in which a certificate ought to have been granted under Act XL of 1858. The applicant in the Court below is Mussamut Nazirun, and according to her own statement, at the time she made her application, her son, Tabaruck Hossein, was within a very few months of attaining majority; and at the time when the learned Judge's order was made in August 1879, he must have been within a few days of attaining his eighteenth year.

In the Court below, Mussamut Muhamdee Begum was, either at her own instance, or by the action of the opposite party, made a party to the proceedings, and Tabaruck Hossein himself also took objection to the certificate being granted. The objector, Muhamdee Begum, claimed to hold a mokurari from the alleged infant made in the preceding March, and she would certainly be prejudiced if the certificate is allowed to stand.

We think that applications for certificates under Act XL of

1858, the result of which would be to prolong minority from eighteen to twenty-one, ought not to be granted when the alleged minor is admittedly so near his majority of eighteen as in this case, unless under particular circumstances, as where very great weakness of mind is proved, or where it is shown that there is some absolute necessity for it. We have had the evidence read to us, and we do not think that any sufficient reason appears for the grant of certificate. We are not satisfied even that the evidence shews that the alleged infant was at the date of the judgment a minor. The Judge, it appears, was satisfied with the evidence, because the witnesses stated that Tabaruck was born some twenty-five days before his father's death. But the evidence as to the date of the father's death does not appear to be at all satisfactory. However, we do not intend to prejudge that question. If Tabaruck was an infant at the time that he executed this mokurari lease, he will not be bound thereby. The case must be determined upon its merits. We think the lower Court ought not to have granted a certificate in this case, the result of which would be to prolong the tutelage of Tabaruck for three years.

A question has been raised whether the appellant here has any *locus standi* in appealing to the Court. We think that, under s. 28 of Act XL of 1858, an appeal is clearly given to any person injured by such an order of Court. The appellant here would certainly be injured by that order, and we think that, as she was a party to the proceedings below, she is entitled to appeal. Upon her appeal we overrule the order of the Court below, and decree that the petitioner, Mussamut Nazirun, was not entitled to a certificate, which we direct must be cancelled. Under the circumstances each party will bear her own costs in this Court.

Appeal allowed.