

Judge's judgment. The plaintiff has given no evidence to show what was the extent of the land which the deed of sale purported to transfer to him. There is nothing to prove that the old boundaries included the site under dispute, as the old sale-deed is not in court, and no reason is given why it was not produced in the court below. The plaintiff was bound to make out a complete ground for ejectment, by showing the precise limits of the land sold to him; and he has failed to do this. We accordingly confirm the decree of the lower court with costs.

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et al.

*Decree confirmed with costs.*



*Referred Case.*

Feb. 16.

MAGANBHAI PURSHOTAMDA'S, a minor, by  
DVA'RKA'DA'S KAHANDA'S, agent of Gir-  
dharlal Likandas, administrator of  
the minor's estate ..... *Plaintiff.*  
VITHOBA' bin NA'RA'YAN SHET ..... *Defendant.*

*Procedure—Minor—Certificate of Guardianship—Foreign Guardian—  
Act XX. of 1864—Suing by next Friend.*

The Bombay Minors' Act (XX. of 1864) does not apply to minors who are not resident within the Presidency of Bombay.

A foreign guardian will not be recognised in the courts in this country in a suit brought by such guardian to recover, on account of a minor, profits arising from immoveable property.

Where a suit was brought by the agent of a minor's guardian appointed by H. H. the Gaikwad of Baroda, it was ordered that the proceedings should be amended by describing such agent as the next friend of the minor, in which capacity he was then permitted to sue.

CASE referred for the opinion of the High Court by Janardan Vasudevji, Judge of the Court of Small Causes at Poona, under Act XI. of 1865, Sec. 22.

"The suit, No. 3054 of 1869, has been brought, to recover from the defendant the rent of a house situated in Aditvar Peth of Poona, by Girdharlal Likandas' as administrator of the estate of a minor, Maganbhai Purshotandas, heir of

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Haribhai Bhaktidas, of Baroda, under a certificate of administration granted by His Highness the Gaikwad of Baroda.

“The defendant contends that the certificate of administration under which the suit has been brought, being one granted by a foreign power, can have no effect in British territory, and that the plaintiff, unless he obtains a certificate of administration to the estate of the minor, Maganbhai, from the Civil Court of the district, under Act XX. of 1864, has no authority to sue on behalf of the minor.

“The question for consideration is whether the certificate of administration granted by the Gaikwad's government to the plaintiff can be recognised in this district by international law.

“The rule recognised in England on this subject is stated in Story's Commentaries on the Conflicts of Law to be that ‘no foreign guardian can *virtute officii* exercise any rights or powers or functions over the moveable or immoveable property of his ward which is situated in a different state or country from that in which he has obtained the letters of guardianship’: (see paras. 504 and 504 *a*). Applying this rule to the present case, I am of opinion that the certificate of administration under which the plaintiff has brought this action, obtained, as it has been, from a foreign power, cannot be recognised in the British territory. His remedy is to procure its confirmation by the proper authority in this district before he can sue on behalf of the minor in any court here.”

The reference was considered this day by COUCH, C.J., and MELVILL, J.

COUCH, C.J.:—We are of opinion that Act XX. of 1864 does not apply to minors who are not resident within the Presidency of Bombay. This is indicated by the preamble, but appears more clearly from Sec. 4 of the Act, which provides that, where the property of the minor is in more than one district, the application shall be made to the court of the district in which the minor has his residence; and subsequent sections show that the Act contemplates a guardianship of

the person as well as of the property of the minor in every case. The prohibition, therefore, in Sec. 2 of Act XX. of 1864, upon which the decision of the court in the Small Cause Court reference No. 24 was founded, has no application.

Although we concur with the Judge of the Small Cause Court in the opinion that the foreign certificate of guardianship cannot be recognised in a suit for the profits of immoveable property, we are of opinion that the minor may be allowed to sue by Dvárkádás Kahándás, the agent of the guardian, as his next friend, in accordance with the ordinary practice of courts in suits brought by infants. If this could not be done, a foreign minor would be disabled from suing for any injury to his property, or to recover any property he might be deprived of. All that appears necessary is that the plaint should be amended by describing Dvárkádás Kahándás as the next friend of the plaintiff, and he will be responsible for the costs of the suit.

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v.  
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