

will not be sufficient to produce the order, or a copy of it. A reference to *Dámódhár Bápúji v. Zinga (a)* and *Dámódhár Bápúji v. Ravjí (b)*, and the remarks made upon those cases in 8 Bom. H. C. Rep. 159, and to *Lálchánd Ramdayál v. Gumbibái (c)*, (with regard to the effect of an order for the issue of letters of administration before the letters themselves are issued,) will show the necessity for the production of the certificate of heirship itself.

1872.
MULCHAND
v.
MOTICHAND
HARGOVAN-
DA'S.

Of course, if a certificate be issued and proved to be lost, the Court is not to be understood as saying that secondary evidence may not be given of it.

The Court holds the opinion of the Judge of the Court of Small Causes of Ahmadabad to be right.

Order accordingly.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 522 of 1871.

April 15.

UTAMRA'M MA'NIKLA'L *Appellant.*
DA'MODHARDA'S MA'NIKLA'L *Respondent.*

Minor—Accounts of Guardian—Administration of Minor's Estate—Jurisdiction—Civil Court of District—Act XX. of 1864.

A suit to compel a minor's guardian, appointed under Act XX. of 1864, to account for his administration of the minor's estate, cannot be properly brought in the Court of a Subordinate Judge or in any Court but in the principal Civil Court of the District where the property is situate, if it be in one district; but if it be in more districts than one, then in the principal Civil Court of the district in which the minor has his residence.

THIS was a special appeal from the decision of W. H. Newnham, Acting Judge of Súrat, in Regular Appeal No. 92 of 1871, confirming the decree of the Subordinate Judge of Balsar.

The special appeal was argued before WESTROPP, C.J., and LLOYD, J., on the 15th April 1872.

(a) 7 Bom. H. C. Rep. A. C. J. 31. (b) *Ibid* 32.
(c) 8 Bom. H. C. Rep. O. C. J. 140, 154, 155,

1872.

UTAMRA'M
MA'NIKLAL
v.
DA'MODHAR-
DA'S
MA'NIKLAL.

Anstey (with him *Vishvánáth N. Mandlik*), for the appellant, objected that the suit had been instituted in the Court of the Subordinate Judge of Balsar, who had no jurisdiction to entertain it under the provisions of Act XX. of 1864.

Shántarám Náráyan, for the respondent, contended that the Code of Civil Procedure contemplated that every suit should be instituted in the Court of the lowest grade competent to entertain it. The District Court could not in the present case be such a Court, for by the Bombay Civil Courts' Act, the Subordinate Judge at Balsar, or the Subordinate Judge of the First Class at Súrat, would be the Court of the lowest grade. Section XIX. of the Minors' Act authorizes the suit without mentioning any special *forum*, which alone is to entertain it. The suit must, therefore, take the ordinary course.

The facts are fully stated in the judgment of the Court :—

WESTROPP, C.J. :—The defendant, not by virtue of any will or deed, or other instrument in writing, but as a near relative (*viz.*, half brother) of the plaintiff and his two younger brothers, has, under the Minors' Act, XX. of 1864, obtained a certificate of administration, and been appointed guardian of the plaintiff and his two younger brothers, all of whom were minors at the time of the death of their father Mániklál Govindrám. The plaintiff states in his plaint that his father died in Sámvát 1920, and that the plaintiff, having come of age in Sámvát 1925, demanded, on behalf of himself and his two younger brothers, an account of his father's estate, and that the defendant refused to account to him; and the plaintiff prays that the defendant may be compelled to render an account from the date of their father Mániklál's death in Sámvát 1920 down to the present time. The defendant denied that the Subordinate Judge's Court, in which the action was brought, had any jurisdiction in the case, and alleged that the plaintiff had received from the defendant the plaintiff's share of the property, and had executed to the defendant a release for it, and that, with the exception of the plaintiff's share, the property was un-

divided, and the plaintiff had no right to demand an account of the share of his minor brothers.

1872.

UTAMRA'M
MA'NIKLA'L
v.
DA'MODHAR-
DA'S
MA'NIKLA'L.

The Subordinate Judge held that he had jurisdiction to entertain the suit, but that the plaintiff had given a release to the defendant for his (the plaintiff's) share of the property, which release was binding on him. The Subordinate Judge held, however, that the plaintiff might sustain the suit for an account of the two minors' property, and made a decree for such account accordingly.

On appeal, the District Judge affirmed that decree with costs, but wholly overlooked the question of jurisdiction.

The defendant appealed on the question of jurisdiction, and as to the right of the plaintiff to sustain such a suit, he having no personal interest in it, and the property, except as already mentioned, being undivided.

Assuming that the plaintiff might sustain such a suit in a Court having jurisdiction, and without alleging in his plaint that the defendant has been guilty of any malversation in his office of administrator or manager, as to the necessity for which allegation we give no opinion, we think that such a suit cannot be properly brought in the Court of a Subordinate Judge, or any where but in the principal Civil Court of the district where the property is situate, if it be in one district; but if it be in more districts than one, then in the principal Civil Court of the district in which the minor has his residence. (Sec. 4.)

The first section of the Act states that "the care of the persons of all minors (not being European British subjects) and the charge of their property shall vest in the Civil Court," which is by Section 34 interpreted to mean the principal Court of Original Civil Jurisdiction in the district. It is to that Court only that, in the Mofussil, the right to grant certificates of administration is given by the Act (Sec. 2 *et seq.*). That Court, and no Subordinate Court, has the power, for any sufficient cause, to revoke any certificate granted under the Act, and to compel the person, whose certificate has been so recalled, to make over the property in his hands

1872. to his successor, and to account to such successor for all moneys received and disbursed by him, and also to remove any guardian appointed by the Court. (Sec. 21.)

UTAMRA'M
MA'NIKLA'L
v.
DA'MODHAR-
DA'S
MA'NIKLA'L.

It, too, was authorized to impose a fine, not exceeding Rs. 500, on any person who may wilfully neglect or refuse to deliver his accounts or any property in his hands within the prescribed time, and to realize such fine by attachment or sale of the property of the person so refusing, and to imprison the recusant until he consents to deliver such accounts or property. (Sec 22.)

The same Court only has power to take security from persons to whom certificates of administration are granted (Sec. 12), and in all inquiries or proceedings, held or had by it under the Act, to make such order as to payment of costs by the person on whose application such inquiry was made or proceeding had *or out of the estate of the minor*, or otherwise, as it may think proper. (Sec. 13.)

Section 19, under which it has been contended that this suit is sustainable, enacts that "It shall be lawful for any relative or friend of a minor, at any time during the continuance of the minority, to sue for an account from any manager appointed under this Act, or from any person to whom a certificate shall have been granted under the provisions of this Act, or from any such manager or person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate." That section does not specially mention the Court in which such a suit for an account may be brought, but, having regard to the portions of the Act which we have already referred to, and particularly to the provision with which the Act opens, that the charge of the minor's property shall vest in the Civil Court (as interpreted in Section 34), we have no doubt that the intention of the Legislature was that the action should be brought in the Court which has the charge of the minor's property, and which, if the account taken in that action shows that the Administrator

or manager has been guilty of malversation and ought to be removed from his office, may remove him, and may, in such a suit, enforce the production of books and accounts by fine and imprisonment, and make all necessary orders as to costs, even to award such costs out of the minor's estate to the friend or relative who has brought a beneficial suit for the minor. It may well happen that in such a suit the defendant, if a defaulting manager, may be insolvent and unable to pay costs, and it would be unjust that the plaintiff should not be recouped for his outlay in costs on behalf of the minor.

Where any Court, other than the principal Civil Court, is intended to have jurisdiction under the Act, it is specially so provided in the Act: as, for instance, in the concluding provisos in Sections 2 and 5.

Holding these views, we are of opinion that the decrees of the Courts below must, on the ground of want of jurisdiction in the Court of the Subordinate Judge, be reversed, and that there must be a decree for the defendant with costs of the suit and both appeals.

[APPELLATE CIVIL JURISDICTION.]

Referred Case.

April 22.

In re KESHAV KA'SINA'TH.

Stamp—Power of attorney—Act XVIII. of 1869, Article 13 Schedule II.—Act VIII. of 1871, Section (a) 33.

For a power of attorney executed under the provisions of Section 33 (a) of the Indian Registration Act of 1871 (Act VIII. of 1871) a stamp of 8 annas is sufficient under Article 13 Schedule II. of the General Stamp Act (No. XVIII. of 1869).

THIS case was stated by the Revenue Commissioner, S. D., under the provisions of Section 41 of the General Stamp Act, for the decision of the High Court, on a reference from the Collector of Puna.

The facts are sufficiently stated in the following letter of the Collector :—

1872.
 UTAMRA'M
 MA'NIKLA'L
 v
 DA'MODHAR-
 DA'S
 MA'NIKLA'L.