

1872. the Insolvent Court in the manner provided by section 72 of the Insolvent Act, and when it appeared that no such notes had been taken, had no option but to dismiss the appeal. The appeal was accordingly dismissed.

Attorneys for the opposing creditor : *Craige, Lynch, and Owen.*

KALLIA'N-
DA'S
KIRPA'RA'M
v.
TRIKA'MLA'L
GULA'BRA'I.

[APPELLATE CIVIL JURISDICTION.]

Sept. 23.

Referred Case.

VIJKOR, mother of PA'NA'CHAND and
TA'RA'CHAND minors, sons of HIRA'-
CHAND deceased*Plaintiffs.*
JLJIBHA'I VA'JI*Defendant.*

Minor—Act XX. of 1864—Next friend, suit by—Procedure.

There is nothing in the Minors Act (XX. of 1864) to prevent the institution of a suit by the next friend of a minor who has not obtained a certificate of administration to the minor's estate, but who claims no right to have charge of the minor's property, asking for a declaration of the minor's rights, and for an order directing the defendant to pay money he owes to the minor into the Principal Civil Court of the District.

As the right, however, of a friend to institute a suit on behalf of a minor is under the control of the Court, and as the Minor's Act, by Sec. 3—7, enables a friend of the minor to protect his interests by applying for the appointment of a fit person to have charge of the property of the minor and to protect his estate, the proper course for a Court, to which a plaint on behalf of a minor is presented by his friend, is either to refuse to accept the plaint, when there is no pressing necessity for its acceptance, or in case such pressing necessity exists, to accept the plaint and stay proceedings until the plaintiff has duly obtained a certificate under the Act.

THIS was a reference made by W. H. Newnham, Acting Judge of the District of Súrat, under Section 28 of Act XXIII. of 1861, for the orders of the High Court.

The reference was considered by SARGENT, Acting C.J., and MELVILL, J.

None of the parties appeared either in person or by counsel.

The facts of the case, so far as material, appear from the judgment of the High Court.

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PER CURIAM:—This is a reference under the provisions of Section 28 of Act XXIII. of 1861 by the Acting District Judge of Surat. It appears from the Judge's statement of the case that a suit had been brought by Pánáchand and Táráchand, heirs of Hiráchand, by their mother Vijkor, to recover from one Jijibhái Vaji the balance of principal and interest due on a note, dated the 15th June 1868 passed to Hiráchand; that the Subordinate Judge rejected the plaint because Vijkor had no certificate as required by Act XX. of 1864 and that she had appealed urging that the order was "contrary to law and justice." The other facts of the case and the grounds on which the Judge has thought it right to refer it for the consideration of this Court are best given in his own words. "Hiráchand died on December 8th 1870; his widow applied for a certificate on February 28th 1871, and after inquiry one was ordered to be given her on June 30th 1871; but in the meantime the period of three years expired, and on the last day she presented her plaint, which was as above rejected. My attention has been repeatedly drawn to the injury entailed on minors by the Limitation Act together with Act XX. of 1864. In this case there was considerable delay in granting the certificate, owing partly to the Court's vacation and partly, I believe, to the delay in appointing an Assistant Judge to replace Mr. Murphy; but a man might die while holding bonds within a week of being time-barred, and as a certificate could not be obtained within that time, and the Limitation Act would not help his minor heir (Section 11), as the disability would have arisen after cause of action accrued, the minor would lose his remedy altogether. It might be urged that this is only the penalty of the laches of the original bond-holder, in not suing before; but this would be, I think, a harsh view of the case.

"It appears to me that the best remedy would be to direct the Subordinate Judges to receive such plaints and endorse them with date of presentation, but not register them

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as suits till the plaintiffs had obtained the necessary certificate, for which time should be allowed; satisfying themselves also that the plaintiffs lost no time in applying to the District Court. (The Subordinate Judge, for example, might briefly report the receipt of each such plaint to the District Court, which in reply would notify to him date of application by the plaintiff.)”

Before discussing what course should have been pursued by the Subordinate Judge, we would remark that Sec. 3 of the Bengal Minor's Act (XL. of 1853), which is the corresponding Section to Section 2 of the Bombay Act XX. of 1864, concludes with the following proviso: “Provided that, when the property is of small value or for any other sufficient reason, any Court having jurisdiction may allow any relative of a minor to institute or defend a suit on his behalf, although a certificate of administration has not been granted to such relative.” It is to be regretted, we think, that the words “for any other sufficient reason” have been omitted from the Bombay Act. Had they not been so, the difficulty to which the Acting Judge refers, would have been at once removed by the Subordinate Judge, in the exercise of his discretion, treating the special circumstances as a sufficient reason for allowing the suit to be instituted without a certificate of administration. It is true that Section 3 of the Act authorizes any relative or friend of a minor to apply to the Court for the appointment of a fit person to take charge of the minor's property, but this application has to be made to the Civil Court, a different Court, and it may be far removed from that in which in all probability legal proceedings would have to be instituted on behalf of the minor. Moreover, the procedure to be observed as directed by the 5th and following sections is in itself a complete bar to a summary appointment of an administrator in a case like the present one, where the necessity for filing the plaint is not discovered till the last moment. It is clear, therefore, that if the Act absolutely forbids the institution of a suit on behalf of a minor otherwise than by a person who has obtained a certificate of administration, the interest of the minor may,

under certain circumstances, be seriously prejudiced. Now, it is to be remarked that Section 2 which forbids any person to institute a suit, who has not obtained a certificate, is in words confined to those who "claim a right to have charge of property in trust for a minor," the object clearly being to take precautions against property of minors falling into the hands of those whose fitness has not been previously inquired into and adjudicated on. There is nothing, however, in the Act which we can discover that prevents the institution of a suit by a friend of the minor who claims no right to have charge of the property, and whose plaint asks for a declaration of the minor's rights, and that the defendant be ordered to pay the money he owes to the minor into the Principal Civil Court of the District, which by Section I. is specially entrusted with the charge of the minor's property, and, therefore, by necessary implication invested with the power of disposing of it as the interests of the minor may require. It is true, perhaps, that such a plaint would be an unusual one in point of form in the Mofussil courts. But, as pointed out by this Court in the case reported at page 7 of 7 Bom. H. C. Rep. (where the Court allowed a minor who was residing outside the Presidency to sue by his next friend), such a suit "is in accordance with the ordinary practice of courts in suits brought by infants."

It may be said perhaps that as the Act provides a course which may be taken by a relative or next friend of a minor who is anxious for the safety of the minor's property, it could not have been intended that he should adopt any other course and that the maxim "*expressio unius est exclusio alterius*" applies.

Such a maxim must, however, yield to the paramount object of the Act which, as declared in the preamble, is "to make better provision for the care of the persons and property of minors," and we think it would be contrary to the spirit of the Act, and defeat the object the Act had in view, were it to be construed as absolutely forbidding the institution of a suit for the benefit of a minor, under any circumstances however pressing, by a next friend not claiming to have charge of the property, but seeking only to protect the minor's interests.

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The right, however, of a next friend to institute a suit has always been considered one more or less under the control of the Court, and, therefore, as the Act enables a friend of the minor to protect his interests by applying for the appointment of a fit person to have charge of the property of the minor and to protect his interests, it would be a proper course on the part of the Judge to refuse to accept such a plaint where there was no pressing necessity for a departure from the course pointed out by the Act, or it might be to accept the plaint and stay proceedings until the plaintiff had obtained a certificate where it was in contemplation to apply for it. We think, therefore, that the plaint should be accepted, after being amended by inserting the words "as their next friend" after the name of the minor's mother in the title of the suit, and by amending the prayer in accordance with the above remarks; and that as the mother has, since the institution of the suit, obtained a certificate, the plaint should be heard and determined as if it had been filed by her originally in her character of administratrix.

Ordered accordingly.

[APPELLATE CIVIL JURISDICTION.]

Sept. 24.

Special Appeal No. 182 of 1872.

MIR ZULEF ALI *Appellant.*

YESHVADA'BA'I SA'HEB, widow of RA'G-

HOJI ANGRIA..... *Respondent.*

Sequestration—Ratification—Independent Sovereign's private property—Evidence.

A sequestration by the officers of the British Government of the private property of the Angria of Kolába—a Native independent Sovereign—though made contrary to the express orders of the Court of Directors originally given, would not be liable to question in a Municipal Court if subsequently ratified, but *aliter* where there is no such ratification.

THIS was a special appeal from the decision of Robert Hill Pinhey, Judge of the District of Pána, amending