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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.*

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[APPELLATE CIVIL JURISDICTION.]

Sept. 24.

*Special Appeal No.* 182 *of* 1872.

MIR ZULEF ALI ..........................*Appellant.*
YESHVADA'BA'I SA'HEB, widow of RA'GHOJI 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 Púna, amending

the decree of N. Daniell, Assistant Judge, passed on remand from the High Court.

The plaintiff, widow of Rághoji Angriá, the late ruler of Kolába, sued the defendant Zulef Ali to recover possession of a piece of land held by her late husband as *miras* in the village of Chakan in the Púna District. On remand of the case by the High Court, the Collector was made a party as defendant No. 2.

Zulef Ali *inter alia* pleaded that the resumption of Angria's estate by the British Government, was an act of State and that no Civil Court had jurisdiction to question such an act, that requests made by the plaintiff to the Government praying for restoration of her *Inam* and *Miras* lands were refused and that a Sovereign could not hold private property especially in foreign territory.

The Collector's answer was to the same effect.

The Assistant Judge awarded the claim and the District Judge in appeal substantially confirmed his decision amending it only by varying his order as to costs.

The special appeal was heard by MELVILL and KEMBALL, JJ.

*Dhirajlál Mathurádás* (Government pleader) and *Vishnu Ghanashám* for the defendant Zulef Ali :—The Collector did not separately appeal. The District Court has presumed, but without any evidence, that the land in question is the private estate of the Angria who being an independent Sovereign could not hold private property in British territory. Even supposing the land to be private property, the resumption thereof was an act of State. No Civil Court has authority to decide between the differences of independent Sovereigns. This case is on all fours with the case of *The Secretary of State* v. *Kamachee Boye Sahaba* (a).

*Shántárám Náráyan* for the respondent contended that this case was to be distinguished from the case quoted by the appellant, inasmuch as the Court of Directors had there rati-

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fied the Act of the Madras Government, while in this case the sequestration was not only not originally authorized but was not subsequently ratified. The Court of Directors, when confirming the resumption of the Angria's State in consequence of the absence of a male heir, ordered that his private property should be restored to his representative.

PER CURIAM:—The District Judge has found (and we see no reason to think that his finding is incorrect) that the land in dispute was the private property of Angria.

That finding, however, is not sufficient to entitle the plaintiff to succeed. There still remains the question whether the land has, since Angria's death, been taken possession of by the British Government by an act of State.

We do not think that that question was raised for the consideration of this Court when the case first came before it, nor that we are prevented by the Court's remand order from now considering it.

The case of the *Secretary of State of India in Council* v. *Kamachee Boye Sahaba* (b) is in many respects similar to that now before us. That was a case in which the property of the Rajah of Tanjore had been seized by the British Government as an escheat, and the suit was brought by his widow to recover his private estate. She obtained a decree in her favour from the Chief Justice of the Supreme Court of Madras, who held that the seizure of the Rajah's private property could not be regarded as an act of State. "It appears" said the Chief Justice "that an order having been issued (by the Court of Directors) to take possession of public property, private property was taken and is now detained under the circumstances above set out. I am of opinion that such detention cannot be considered an act of State, nor can I consider that the subsequent adoption by the defendants can make that an act of State which originally was not so." This decision was reversed by the Judicial Committee of the Privy Council, who held that, even if the property were private property, and even if the original seizure were

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not authorized by the order of the Court of Directors, yet the seizure was subsequently approved by the Governor of Madras, and was adopted and ratified by the East India Company in their answer to the suit: that such ratification was equivalent to a previous authority, and that the seizure was an act of State, to enquire into the propriety of which a Municipal Court had no jurisdiction.

In the present suit, accepting the District Judge's finding that the land was Angria's private property, we must hold that the original sequestration was not authorized by the order of the Court of Directors. But the question remains—whether, as alleged by the appellant, there has been a subsequent ratification of the sequestration.

It cannot be said that the Collector's defence to this suit constitutes a sufficient ratification. To justify an act opposed to the original order of the Court of Directors, there must be shown to have been a ratification either by the Court of Directors or by the Secretary of State in Council.

The appellant refers us to the Collector's examination, Exhibit No. 70, as shewing that an application made by the plaintiff to the Court of Directors for the restoration of Angria's lands was rejected on the 7th June 1848. No copy of that application however, nor of the reply of the Court of Directors, has been given in evidence in the case. The defendant complains that the Assistant Judge refused to assist him to procure copies of these papers, and asks us to remand the case in order that he may have an opportunity to produce them. There appears to be no sufficient reason for granting him this indulgence. In his Darkhást No. 117, the defendant asked the Court to send for the papers either from the Collector or from Government under Section 138 of Act VIII. of 1859. The application was refused on the ground that the defendant ought to produce copies. There is no allegation that he has ever asked for or been refused copies; and Exhibit 76 shows that the Collector has been willing enough to give him copies of other documents which might be of use to him; nor is there any reason to suppose that the plaintiff's petition to the Court of Directors and the

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answer thereto would, if produced, shew any thing more than that the plaintiff had asked for, and been refused the restoration of Angria's *Ináms*, or the privilege of holding *wattan* and other lands free of assessment. That we understand to be the meaning of what the Collector says in his examination, No. 70. The object of the present suit is not to establish the plaintiff's rights as Inámdár, but to establish her right as Mirásdár, to the occupancy of certain lands subject to the payment of the Government assessment. It is clear from the Government Resolution No. 2807, dated the 10th August 1860 (Exhibit No. 76), and generally from the manner in which the Collector has defended this suit, that the Government do not consider that this right of occupancy has been confiscated. There is not the least reason to suppose that this right was referred to in the plaintiff's application to, and the reply of, the Court of Directors, and indeed as regards the particular land now in dispute, it could not have been referred to; for the application was made in 1847 and it was not until sometime after this that Angria's name was removed, and that of the defendant entered as occupant of the land. On these grounds we are of opinion that even if the plaintiff's application, No. 117, was improperly rejected (we do not say that it was), the evidence asked for could not have varied the decision.

On the whole we think that the decree appealed against is the decree which ought to be made, and we confirm it.