

therefore, with pleasure give you in adoption to him. Hereafter you are to behave as if you are his son, and I have no right over you. You are his son, and I execute this admission of consent with pleasure.

"Dated as above.

"Mark of BALVA KOM GURAPPA."

Admission of consent to the above executed by Parmeshvarappa bin Irbassappa to the following effect:—

"My elder brother Mallappa has taken you in adoption, and has made you heir to the share of all his property that will come to him. I have my consent to it.

"Dated as above.

"Signature of PARMESHVARAPPA BIN IRBASSAPPA."

There was no appearance for the parties.

#### OPINION.

*Per Curiam*:—The conveyance (Ex. A) and the written assent by Ramappa are employed by the parties to the sale to complete the transaction. Whether Ramappa's assent was necessary, might be a difficult question of law and fact. But the parties must be deemed to have considered it was necessary, and therefore to have employed the conveyance and assent to complete the transaction as contemplated by s. 6 of the Stamp Act; and as they are "several" instruments, of which the conveyance is the principal one, the case falls under s. 6, and the assent by Ramappa, if written on a separate piece of paper, would, therefore, require a one-rupee stamp. But as it has been written on the [285] same piece of paper as the conveyance, it would appear from s. 13 that the Collector ought to refuse to stamp it.

Exhibit B is not an instrument conferring an authority to adopt, and is not, therefore, chargeable under art. 38 of sch. I of the Act or under any other article of the Act—*In the matter of Ambai* (1). The endorsements below it cannot, therefore, be chargeable with stamp duty.

13 B. 285

#### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

YEKNATH AND OTHERS (*Original Defendants*), *Appellants v. WARUBAI* (*Original Plaintiff*), *Respondent*.\* [3rd September, 1888.]

*Minors' Act, XX of 1864—Minor—Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property—No such necessity for appointment of guardian of person—Age of majority—Indian Majority Act, IX of 1875—Limitation.*

The Bombay Minor's Act XX of 1864 does not, in terms, provide for the appointment of a guardian of the property of a minor, but only for the grant of a certificate of administration, so that until the certificate is issued there is no such appointment of the guardian of the property as will extend the age of minority from eighteen to twenty-one. But it is different as regards the appointment of a

\* Second Appeal No. 294 of 1886.

(1) *Supra* 13 B. 280.

1888  
SEP. 3.  
—  
APPEL-  
LATE  
CIVIL.  
—  
13 B. 285.

guardian of the person. The act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act, on the language of which it is plain that the appointment of a guardian of the person is complete on the order of the Court being made appointing him.

The plaintiff's mother Gitabai died in 1866 possessed of property which she had inherited from her husband. The plaintiff, who was born in 1858, was then a minor of the age of eight years. In 1867 the plaintiff's maternal grandfather obtained a certificate of administration. On his death an order of Court was made on the 21st March, 1873, appointing the Nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff but no fresh certificate of administration was granted. In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother. The defendants contended (*inter alia*) that the plaintiff had attained her majority in 1874, when she arrived at the age of sixteen, and that the suit was, [286] therefore, barred by limitation. The plaintiff, on the other hand, contended that the Indian Majority Act, IX of 1875 was applicable, and that under its provisions she did not attain majority until she was twenty-one, i.e., until the year 1879, and that the present suit was, therefore, in time.

*Held*, that the suit was not barred by limitation. The Indian Majority Act IX of 1875 was applicable (except so far as its operation was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore, the period of minority for her was extended to twenty-one years of age.

*Quere*—Whether the fact that a guardian has been at one time appointed is sufficient to bring the case within s. 3 of the Indian Majority Act IX of 1875 so as to extend the period of minority to the age of twenty-one. The intention of the Legislature to be gathered from s. 3 would appear to be to extend minority to twenty-one years of age in cases where at the time the minor reaches the age of eighteen his person or property is in the hands of a guardian.

[F., 21 B. 80=8 Bom. L.R. 897; 36 C. 768=13 C.W.N. 643=1 Ind. Cas. 724; R., 21 B. 281 (284).]

THIS was a second appeal from a decision of G. Druitt, Acting District Judge of Sholapur-Bijapur, confirming the decree of Rav Saheb Moreshwar N. Ovalekar, Subordinate Judge of Pandharpur.

In or about 1861 the plaintiff's father, Dada Namdev, died leaving him surviving his widow Gitabai and the plaintiff and her sister Haribai. Gitabai succeeded to the property of her husband and died in 1866 possessed of the property she had inherited from her husband, consisting of a house and a share in a certain *vritti*. The plaintiff being then a minor, having been born in 1858, her maternal grandfather, Appa Haribhat, obtained a certificate of administration in 1867. Subsequently Appa Haribhat died. On the 21st March, 1873, an order of Court was made appointing the Nazir of the Court administrator and the plaintiff's mother-in-law guardian of her person, but no fresh certificate was issued.

The plaintiff brought the present suit in 1880 to recover the house and the *vritti* from the defendants.

The defendants contended, among other things, that the cause of action accrued on the death of the plaintiff's mother in 1866; that the plaintiff's disability as minor had ceased on the grant of a certificate of administration to Appa Haribhat according to s. 18 of the Minors' Act XX of 1864; that the plaintiff according [287] to s. 30 of the Minor's Act, attained her majority in 1876, when she completed her eighteenth year; and that the suit having been brought more than three years since she attained majority was barred by limitation.

The Court of first instance held that the plaintiff's suit was not barred, and awarded her claim.

The defendants appealed to the District Judge, who confirmed the lower Court's decree.

The defendants preferred a second appeal to the High Court.

*Shantaram Narayan (Ganesh R. Kirloskar, with him)*, for the appellants (defendants):—The suit is barred. The plaintiff attained majority at the age of sixteen according to the Hindu law. Section 3 of the Majority Act IX of 1875 raises the age of majority to twenty-one years in the case of those persons for whose person or property a guardian has been appointed. There must be an actual appointment of the guardian. Here a mere order appointing the Nazir of the Court was made, but no certificate was granted, and, therefore, there was no appointment—see *Sahai Nand v. Mungniram* (1). A certificate of guardianship takes effect from the time it is issued, and not from the date of the order: see *Nowbat Roy v. Lala Kedar Nath* (2). Unless, therefore, the certificate is issued, the order is useless. Here there was no valid appointment of the Nazir as administrator of the minor's property. It is only for the purposes of the Minors' Act that the age of eighteen is made the age of majority by s. 30 of that Act. Up to that age a certificate can be applied for and obtained. The Limitation Act IX of 1871 made eighteen the age of majority, but the present Act XV of 1877 does not define a minor. When the Indian Majority Act IX of 1875 was passed, the plaintiff had already reached her eighteenth year, and there was nothing to prevent her from suing within three years from that time. Act IX of 1871, s. 2, cl. (c), provides that nothing therein shall affect the "capacity" of the person who had attained majority under the law applicable to that person. Here the plaintiff had, according to her law, attained majority in 1874 before the Act, and the Majority Act, therefore, does not apply. The [288] Limitation Act does not take away the capacity of a Hindu who has ceased to be a minor under his law, but gives him three years more as a privilege. The power to bring a suit implies capacity. If the right and power had vested in the plaintiff, the prohibitory clause in the Majority Act does not apply. The plaintiff having neglected to sue within the time allowed to her by law, her suit is barred.

*Mahadev Chimnaji Apte*, for the respondent (plaintiff):—The plaintiff was represented by her guardian duly appointed. Where there is an appointment of a guardian, the age of majority is twenty-one by s. 3 of Act IX of 1875. When an order for issue of a certificate is made, the appointment of the guardian is complete for all purposes. There was a validly appointed guardian in existence when the plaintiff attained the age of sixteen and eighteen, and, therefore, the Majority Act IX of 1875 applies. During the time the appointment was in force a suit by the plaintiff would not have been maintainable. A Hindu is subject to Hindu law so far as contracting is concerned, but in respect of limitation he is to be governed by the Limitation Act, which in this case is Act IX of 1871. When Act IX of 1875 came into force the plaintiff was a minor according to the Minors' Act as well as the Limitation Act then in force. Before the Majority Act came into force, a state of guardianship and administration existed, and, therefore, under s. 3 of the Majority Act the plaintiff's age of majority was twenty-one years. When a minor has once been brought within the jurisdiction of the Court it is enough even though a formal certificate is not issued—*Girish Chunder v. Abdul Selam* (3). The "capacity" spoken of in s. 2, cl. (c) of the Majority Act refers only to capacity to contract, and not the ability to sue, which is a question of procedure—see *Puyikuth Ithayi v. Kairhirapokil Mamod* (4). The plaintiff's suit, therefore, is not barred.

1888  
SEP. 3:

APPEL-  
LATE  
CIVIL.

13 B. 288:

(1) 12 C. 542.

(2) 13 C. 219.

(3) 14 C. 55.

(4) 3 M. 248.

## JUDGMENT.

SARGENT, C. J.—This is a suit to recover possession of a house in Pandharpur and a share in the *oritti* of the temple of Vithoba at Pandharpur to which the plaintiff claimed to be entitled on the death of her mother in 1866. The important question in the case is whether the suit is barred.

[289] It is not disputed that the plaintiff was born in August, 1858; and it is contended for the defendant that she came of age in August 1874, on attaining the age of sixteen, and that the suit, not having been brought till 1880, is, therefore, barred. On the other hand, the plaintiff contends that the Majority Act IX of 1875 was applicable, and that consequently she did not come of age till she was twenty-one, *i.e.*, till 1879, and by the Limitation Act XV of 1877 the suit would not be barred before 1882.

The third section of the Majority Act makes it applicable, subject to the provisions of s. 2, to "every minor of whose person or property a guardian has been or shall be appointed by any Court of justice," and it provides that "every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before." In the present case a certificate of administration had been granted to one Appa Haribhat in 1867. But he died a short time after, and on the 21st March, 1873, an order was made appointing the Nazir administrator and the mother-in-law of the minor guardian of her person; but no new certificate of administration appears to have been granted.

It has been contended for the defendant that under these circumstances the Majority Act does not apply. We think it doubtful whether, as was urged by Mr. Apte, the fact of a guardian having been once appointed is sufficient to bring the case within the first clause of s. 3 of the Majority Act. The position of a minor after the death of the guardian does not appear to be changed by any provision of the Minors' Act XX of 1864, from what it was before the appointment. The intention of the Legislature to be gathered from s. 3 of the Majority Act would appear to be to extend the minority to twenty-one where the minor's property or person was in the hands of guardian at the age of eighteen. But, however that may be, we think there was in this case a valid appointment of a guardian, at any rate of *the person* of the minor when the plaintiff arrived both at sixteen and eighteen years of age. Whether there can be said to be an appointment [290] of a guardian of the property of a minor before a certificate of administration has been issued, has been much considered in the Calcutta High Court, as appears from the conflicting decisions in *Stephen v. Stephen* (1), *Chunee Mul Johary v. Brojo Nath Roy* (2), *Nowbat Roy v. Lala Kedar Nath* (3), and *Girish Chunder v. Abdul-Selam* (4). We agree with the opinion expressed by Garth, C. J., in *Stephen v. Stephen* (1) that, upon the proper construction of the Act XX of 1864 and the Majority Act of 1875, until the certificate of administration has been issued, there is no such appointment of a guardian of the property as will extend the age of minority from eighteen to twenty-one. Act XX of 1864 does not provide, in terms, for the

(1) 8 C. 714=9 C. 901.

(2) 8 C. 967.

(3) 13 C. 219.

(4) 14 C. 55.

appointment of a guardian of the property, but only for the grant of a certificate of administration; and it is plain from the language of s. 2 of the Act that "until he shall have obtained such a certificate," which can only mean "until it has been issued," a guardian of the property cannot be said to have been "appointed," by which is presumably intended one with the powers which by the Act are intended to be vested in him.

The case, however, is different as regards an appointment of a guardian of the person. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act. This is clear from s. 10 and s. 31, and is made still clearer by the contrast between the grant of certificate of administration and the appointment of a guardian of the person which is so marked in the language of ss. 21 and 23. It is true that the rules of the Court provide a form of certificate of guardianship of the person; but on the language of the Act itself, and that must determine the question, it is plain, we think, that the appointment of a guardian of the person is complete on the order of the Court being made so appointing the guardian. In the present case it is admitted there had been such an appointment. The Majority Act is, therefore, applicable in our opinion, except so far as its operation may be excluded by the provisions of s. 2.

[291] It has been contended for the defendant that to apply the Act to the present question would be to affect in the contemplation of sub-clause (c) of that section the "capacity" of the plaintiff, who had, it is said, by general Hindu law attained her majority in 1874, *i.e.*, before the Majority Act had come into force. But the term "capacity" obviously refers to the power to sue and contract, and cannot be deemed to apply to the "liability" on arriving at majority to have time run against the right to file a suit as prescribed by the Statute of Limitations. But even if it could be so understood, the law applicable would be the Limitation Act of 1871, by which the time of arriving at majority was eighteen (notwithstanding that by the general Hindu law minority ceased at sixteen), and, therefore, the plaintiff would not have arrived at majority until 1876, *i.e.*, after the passing of the Majority Act. Sub-clause (c) of s. 2 has, therefore, no application to the present case. We must, therefore, hold that the suit is not barred.

13 B. 291.

### CRIMINAL REVISION.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

QUEEN-EMPRESS v. IRAPPA.\* [6th September, 1888.]

*Bombay Land Revenue Code (Act V of 1879), ss. 125, 214 and 215—Boundary-marks—Jurisdiction of Magistrates—Rules 101 and 111, cl. 3 (a)—Survey settlement, meaning of.*

The accused was charged before a Second Class Magistrate with digging earth within a space of two cubits of an earthen boundary-mark, in contravention of Rule 101 of the Rules made by Government under s. 214 (g) of the Bombay Land Revenue Code (Act V of 1879). The Magistrate convicted the accused under Rule 111, cl. 3 (a) and sentenced him to a fine of one rupee.

\* Criminal Review, No 238 of 1888.