1892 SEP. 7. APPELLATE CIVIL. 17 B. 562.

Defendants 2 and 3 in the suit No. 169 of 1887 on the original side of the High Court pleaded in their written statement that as against them the Court had no jurisdiction. That Court so decided and dismissed the suit against them. There was no decision on the merits, and the proceedings against them in that Court were a nullity. The case of *King* v. v. *Hoare* (1), which was treated as a binding authority in the case in the House of Lords of *Kendall* v. *Hamilton* (2), does not appear to have been cited, or to have been present to the mind of the District Judge when he was preparing his judgment. [566] The sections of the Civil Procedure Code quoted by the District Judge have, in our opinion, no application.

We therefore reverse the decree of the District Judge and restore that of the Subordinate Judge. All costs on defendants.

Decree reversed.

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17 B. 566.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

VALLABDAS HIRA CHAND (*Original Opponent*) *v.* KRISHNABAI (*Original Applicant*), *Opponent.** [27th September, 1892.]

Guardians and Wards Act (VIII of 1890), *s.* 41, *cl.* 3, *and s.* 51—*Its applicability to guardians who had ceased to be such before the Act came into force—Guardian and ward.*

The Guardians and Wards Act (VIII of 1890) does not apply to guardians whose powers had ceased by reason of their wards having attained majority or otherwise, prior to the passing of the Act.

The word 'guardian' in s. 51 of the Act means a guardian who was such at the time the Act came into force.

A was appointed a guardian of *B*'s property under the Bombay Minors Act, XX of 1864. *B* attained majority in 1886. In 1892 *B* applied to the District Judge for an order directing *A* to deliver to B his property, together with the accounts relating thereto. The District Judge made the order, as asked for, under s. 41, cl. 3 of Act VIII of 1890.

Held, that the District Judge had no jurisdiction under Act VIII of 1890 to make the order in question, as *A* had ceased to be a guardian before the Act came into force.

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

On the 30th January 1879 the applicant was appointed administrator of the estate of the opponent Krishnabai, then a minor, under s. 6 of the Bombay Minors Act, XX of 1864.

Krishnabai attained majority in 1886.

Krishnabai adopted a son, and an arrangement was made between her and the administrator of the estate, under which she was to be paid Rs. 50,000 in cash, and the rest of her estate was to be held by the administrator in trust for the benefit of the adopted son.

[567] On 25th March, 1892, she applied to the District Judge under Act VIII of 1890, praying that the applicant should be ordered to deliver up all the property in his hands belonging to her, together with the accounts and other papers relating thereto.

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* Application No. 108 of 1892 under Extraordinary Jurisdiction.

(1) 13 M. and W. 494. (2) 4 Ap. Ca. 504.

1892 SEP. 27. APPELLATE CIVIL. 17 B. 566.

The District Judge granted this application under s. 41, cl. 3 of Act VIII of 1890, holding that, by s. 51, the present Act was applicable to guardians appointed under Bombay Act XX of 1864.

Against this decision the present application was made to the High Court under its revisional jurisdiction.

Branson (with him Rao Saheb *Vasudev J. Kirtikar*), showed cause.—The applicant was appointed guardian under Bombay Act XX of 1864. He is still in possession of his wards' property. Act VIII of 1890, therefore, governs the present case—*Shri Umabai* v, *Shri Vasudev Pandit* (1); *Ramchandra* v. *Yamunabai* (2); *Chimaji* v. *The Nazir of the District Court of Poona* (3).

Inverarity (with him *Mahadev Chimnaji Apte*), *contra*.—Section 51 of Act VIII of 1890 should be read with s. 4. Section 4 defines a guardian to be one who was acting as such at the time the Act came into force. Section 51, therefore, does not apply to a guardian who had become *functus officio* before the date of the new Act. In the present case the ward attained majority in 1886, and thereupon the guardian's powers ceased. That being the case, the lower Court had no jurisdiction to make an order under s. 41, cl. (3) of the new Act for the restoration of the property to the opponent. The present case is governed by Act XX of 1864. And under that Act the Court had no power to pass such an order—*Shri Umabai* v. *Shri Vasudev Pandit* (1); *Ram Dyal* v. *Amrit Lall* (4); *Doolun Singh* v. *Torul Narain Singh* (5).

JUDGMENT.

TELANG, J.—The Judge in the Court below has expressed an opinion that, under the provisions of Act XX of 1864, it would not have been competent to him to make any such order as he **[568]** has made in this case, but that it was open to him to make such order under the Guardians and Wards Act, 1890, s. 41, cl. (3). Having regard to such cases as those of *Ramchandra* v. *Yamunabai* (2), and *Chimaji* v. *The Nazir of the District Court of Poona* (3), and also on general grounds, I am not prepared to say that the Judge's opinion as regards Act XX of 1864 is right. And the decision he refers to, of *Shri Umabai* v. *Shri Vasudev* (1), does not seem to be necessarily applicable to this case. On the other hand, it must be admitted to be at least open to doubt whether the new Act applies, and I am inclined to hold that Mr. Inverarity is right in his argument, that s. 51, when compared with the definition of guardian in the Act, cannot have the force which the District Judge has given to it. But I do not think it necessary to consider either of these points further. It appears from the judgment of the District Judge, that the applicant before us relied upon a "specific arrangement" come to between him and the opponent after the latter came of age, in pursuance of which a sum of Rs. 50,000 was paid by the applicant to the opponent, and the applicant undertook to hold the residue of the property in his hands for the benefit of the son adopted by the opponent. The District Judge declined to go into this point altogether. But I am of opinion that whether the guardian could under ordinary circumstances have set up a *jus tertii* or not as to which see *Stone* v. *Godfrey* (6) and *Newsome* v. *Flowers* (7), it was the duty of the Court, before making an order for the

(1) P.J. for 1885, p. 189. (2) *Ibid*, 1879, p. 15. (3) P.J. for 1880, p. 104.
(4) 9 W.R. 555. (5) 4 W.R. 3 (Mis. App.). (6) 5 De Gex M. and G. 76.
(7) 30 Beav. 461.

1892
SEP. 27.
APPELLATE CIVIL.
17 B. 566.

restoration of property, to inquire into such allegations as were made in this case relating to a "specific arrangement" between the guardian and his *quondam* ward, whereby the old trust was, to all intents and purposes, satisfied, and a fresh trust created tor the adopted son. The order made by the Judge is quite incompatible with the alleged, "arrangement" and yet even the factum of that "arrangement" has not been inquired into at all. On this ground I agree to reverse the order of the District Court, leaving the parties to take such steps as they may be advised for enforcing their rights, whatever they may be.

[569] PARSONS, J.—In January, 1879, the applicant was appointed the guardian of the property of the opponent under Act XX of 1864. The opponent came of age in 1886, and in March, 1892, asked the District Judge of Poona to make an order directing the applicant to deliver to her her property, with all accounts relating thereto. The District Judge, after hearing the applicant made the order asked for, and the applicant has now applied to this Court to exercise its extraordinary jurisdiction and set aside the order.

The District Judge says that "under the old law, Act XX of 1864, no power to make any such order existed," and he has made his order under the provisions of s. 41 of the Gurdians and Wards Act, 1890, which he holds applies to the case by virtue of s. 51. The question is, whether the Act of 1890 applies to guardians whose powers had ceased by reason of their wards having attained majority, or otherwise, prior to the passing of the Act. This question I determine in the negative.

The words in s. 51 "a guardian appointed by or holding a certificate of administration from a Civil Court" when read with the definition in s. 4 (2) can only mean a guardian who is such at the time the Act comes into force. They cannot mean a guardian who had been appointed or who had held a certificate, but who was no longer a guardian, his ward having come of age and his powers having ceased before the passing of the Act. I am confirmed in this view by the words in s. 41 itself. Clause 3 of this section says: "When for any cause the powers of a guardian cease, etc." The word "cease" must here mean cease after the Act comes into operation. I cannot construe it as equivalent to "have ceased," or read the words "or have ceased" after it. On this construction of the Act, I decide that the District Judge had no jurisdiction under the Act of 1890 to make the order in question. Act XX of 1864 must govern the case.

I must also rule that the District Judge was wrong in refusing to enquire into the allegation of the applicant that the opponent had adopted a son and had, after she attained majority, constituted him the trustee of that son in respect of the property in [570] question. Clearly, if that allegation was proved, and if the applicant had validly been created the trustee of the son, no order could have been passed directing the applicant to hand over property to the creator of the trust in breach of that trust. I would make the rule absolute, but as my learned colleague differs from the view taken by the District Judge as to his power to make the order under Act XX of 1864, in which view I am inclined to concur, this Court simply reverses the order of the District Judge as made without jurisdiction under the Guardians and Wards Act, 1890, leaving it open to the opponent to move the District Court under Act XX of 1864, if so advised. The opponent must pay the applicant's costs that have been incurred in this and the District Court.

Order reversed.