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was there held that a gift for public purposes was too uncertain; for the same reason the gift for "purposes of popular usefulness" is bad. That we are entitled to be guided on this subject by the English rulings is apparent from the decision in *Runchordas* v. *Parvatibai*.[1]

The conclusion, therefore, to which I come is that the learned Judge was perfectly right in his opinion that the gift in clause 5 was bad for uncertainty.

We must accordingly confirm the decree, and the appellants must bear the costs of this appeal.

Respondents 4 and 5 will get the difference between party and party and attorney and client costs out of the estate, but in no case shall costs of more than one counsel be allowed.

Attorneys for appellants:—*Messrs. Crawford, Brown & Co.*

Attorneys for respondent:—*Messrs. Madhavji, Kamdar & Chhotubhai*; *Tyabji, Dayabhai & Co.*; *Crawford, Brown & Co.*, and *Little & Co.*

B. N. L.

ORIGINAL CIVIL.

Before Mr. Justice Davar.

NAGARDAS VACHRAJ, PLAINTIFF, *v.* ANANDRAO BHAI, DEFENDANT.*

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Guardians and Wards Act (VIII of 1890), sections 47, 48—Indian Majority Act (IX of 1875), section 3—Power of Chamber Judge to alter, vary, modify or set aside orders made by his predecessor in Chamber under the Guardians and Wards Act—Period of minority on vacating of such orders does not extend to 20 years.

Section 48 of the Guardians and Wards Act immediately following as it does the section which provides for appeals is intended to give finality to contested orders and to enact that, when once an order is made, except as provided in section 47 and saving the provisions of section 622 of the Civil Procedure Code, the order shall be final and shall not be contested by a substantive suit or by any other form of litigation.

(1) (1889) 23 Bom. 725.

* Original Suit No. 60 of 1907.

The Guardians and Wards Act makes no provision for setting aside an order made under the Act, but judging from the analogy of English practice there can be no doubt that in these miscellaneous matters the Judge sitting in Chambers and making orders on petitions and applications has the power to vary, alter, modify or set aside his own orders when he finds that the order is one which ought not to have been made and that the order is one that requires in the interests of justice to be dealt with in that way.

If an order is made under the Guardians and Wards Act and such order is subsequently set aside the period of minority is not extended to 21 years under section 3 of the Indian Majority Act.

PROCEEDINGS in Chambers.

This was an application made by the plaintiff Nagardas Vachraj for the appointment of a guardian *ad litem* for and on behalf of the defendant Anandrao Bhai for the purposes of the suit.

The facts leading up to this application were as follows:—

On the 10th March 1905, on a petition made by Mathurabai, the mother of Anandrao Bhai, a minor under the age of 18 years, Mr. Justice Tyabji made an order whereby he appointed the said Mathurabai as the guardian of the person and property of the said Anandrao Bhai upon giving security to the extent of Rs. 1,90,838. This security she did not give. This order was made under the Guardians and Wards Act (VIII of 1890). After the aforesaid order was made Mathurabai instituted a suit against one Bhagirtibai as the next friend of her said minor son, which suit is still pending. Having regard to the aforesaid order the minority of Anandrao Bhai was in fact exetended to 21 years instead of 18 under section 3 of the Indian Majority Act (IX of 1875). On the 23rd January 1907 Mathurabai made a petition to the Court and on this petition and upon the application of Anandrao Bhai the minor who alleged that he had completed his 18 years, Mr. Justice Davar, after hearing counsel for the said petitioner and her said minor son, set aside the order made by Mr. Justice Tyabji on the 10th March 1905. On the strength of this order made by Mr. Justice Davar the defendant Anandrao in the present application contended that the appointment of his guardian *ad litem* for him for the purpose of this suit was not necessary and that he had come of age.

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On the other hand the plaintiff Nagardas contended that apart from the question whether Mr. Justice Davar sitting as a Chamber Judge had power or jurisdiction to set aside the order of his predecessor in Chambers (which power or jurisdiction he denied), the said Anandrao Bhai, notwithstanding the said order of Mr. Justice Davar, was still a minor and hence it was necessary that a guardian *ad litem* for the purpose of this suit should be appointed for him.

Setalvad for plaintiff:—By reason of Tyabji's order of 10th March 1905 the defendant does not obtain majority until he is 21 years old. See *Gordhandas* v. *Harivalubhdas*(1) wherein Sir Charles Farran, C.J., and Strachey, J., held that, though a guardian has been discharged and there was no guardian of the person and property in existence, still, having regard to section 3 of the Indian Majority Act, the defendant therein was still a minor at the date of the note sued on. In that case the defendant had completed his 18th year and was 19 years of age when he executed the note sued on: see also *Khwahish Ali* v. *Surju Prasad Singh*(2) and *Rudra Prokash Misser* v. *Bhola Nath Mukherjee*.(3) The Court has no power to set aside the orders of Tyabji, J.: see Guardians and Wards Act, sections 47 and 48.

He also referred to *Shivram* v. *Krishnabai*(4) and *Gopalchander Bose* v. *Ganesh Chander*.(5)

Inverarity for defendant:—Tyabji, J.'s order of March 10th, 1905, having been rightly set aside the defendant is in the position he occupied before the order was made and so attained majority when he reached 18 years.

The Court can set aside the order of Tyabji, J., under section 21 of the General Clauses Act, 1897: see *In re Newman*.(6)

DAVAR, J.:—The plaintiff, who is an attorney's clerk, has filed this suit for a declaration amongst other things that on the two insolvencies of the first defendant's father, Bhai Ganpat, the properties mentioned in the plaint vested in the Official Assignee and that the same are now validly transferred to him. For a sum

(1) (1896) 21 Bom. 281.
(2) (1881) 3 All. 598.
(3) (1886) 12 Cal. 612.
(4) (1906) *ante* p. 80.
(5) (1906) 4 C. L. J. 412.
(6) [1899] 2 Q. B. 587.

of Rs. 2,000 paid by him to the Official Assignee he has purchased from him all the right, title and interest of the insolvent Bhai Ganpat in the properties mentioned in the schedule to the conveyance, dated the 23rd of December 1905, and all other estate that may have been left by Ganpat Maneckji Patel, the father of the insolvent Bhai Ganpat. The properties claimed by the plaintiff are of the value of about a lákh and ninety thousand rupees. On the 17th of January 1907 the plaintiff presented a petition to the Prothonotary, alleging that the first defendant was a minor under the age of 18 years and praying that his mother or some other fit and proper person may be appointed his guardian *ad litem* for the purposes of the suit. The notice was argued before me in Chambers on Saturday the 23rd and Tuesday the 26th of March last.

At the hearing before me Mr. Setalvad for the plaintiff admitted that the first defendant was over eighteen years of age, but he contended that, by reason of an order made by the late Mr. Justice Tyabji on the 10th of March 1905 whereby the first defendant's mother was appointed the guardian of the person and property of the first defendant who was then a minor, the first defendant would not attain majority till he was 21 years of age.

Mr. Inverarity for the first defendant contended that the order of the 10th of March 1905 was an order which ought never to have been made and the same was on the 28th of January 1907 on an application made to me in Chambers by the first defendant and his mother, set aside by me and that the first defendant now was in the same position as if the original order had never been made.

Mr. Setalvad strenuously argued that I had no power to cancel vacate and set aside the order made by Mr. Justice Tyabji, and that in doing so I acted without jurisdiction. He further argued that once the order was made the period of minority under the provisions of section 3 of the Indian Majority Act being Act IX of 1875 was extended to 21 years and that the subsequent annulment, cancellation or setting aside of the order did not affect the question.

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The circumstance under which the original order was made and the reasons which induced me to set aside the order are given in my judgment which I delivered on Monday the 28th of January 1907. (See Chamber Note Book, p. 59.) The questions raised by Mr. Setalvad were present before my mind when I gave my judgment, and it will be seen that my mind was not free from doubts on these questions. I am glad therefore that the same questions have now been fully and elaborately argued before me.

The first question for my consideration is—Had I jurisdiction to set aside the order of the 10th of March 1905? Mr. Setalvad points to section 48 of the Guardians and Wards Act and relies on the words "an order made under this Act shall be final." A glance at the section makes it quite clear that that section immediately following as it does the section which provides for appeals is intended to give finality to contested orders and to enact that once an order is made, except as provided in section 47 and saving the provisions of section 622 of the Civil Procedure Code, the order shall be final and shall not be contested by a substantive suit or by any other form of litigation.

Mr. Inverarity brings into requisition section 21 of the General Clauses Act (X of 1897) and argues that under that section I sitting in the place of the Judge who made the order have power to rescind the same. I do not think it is necessary for me to consider the applicability of that section or to resort to the same to justify my action in setting aside the order of the 10th of March 1905.

I have found that the order was improperly obtained and erroneously made. Not only was there nothing to satisfy the Court that it was for the welfare of the minor that the order should be made as required by section 7 of the Guardians and Wards Act but it was an absolutely unnecessary order. The requirements of section 10, clause (*k*), were not complied with and no cause which led to the making of the order was even suggested in the petition. In the course of his long argument before me I repeatedly asked Mr. Setalvad to tell me how that order was for the welfare of the minor and to give me one single reason why it was neces-

sary or desirable that such an order should have been made. I asked him to suggest to me one single cause which could have led to the making of the application.

Mr. Setalvad's only answer was that in making these enquiries I was really sitting in appeal on Mr. Justice Tyabji's order. This does not deter me in the least. As I have observed before, if my learned predecessor in office had been sitting in my place, and if the facts that are brought to my notice had been brought before him, he would, I feel most confident, have set aside his own order with far less hesitation than I have done. Even at this stage not one single satisfactory reason is put forward in justification of the application for the appointment of a guardian of the minor. When the minor attained the age of 18 years he appealed to the tribunal that made the order to free him from the trammels of that order which, far from being for his welfare, was working positive hardship on him. Although he was declared absolutely entitled to the whole of the family property, subject to certain provisions, he found that the whole of the estate was involved in litigation and that his properties were in the hands of a Receiver though for certain reasons, not difficult to understand, he was called a Special Commissioner. He desired to be put in possession of his properties and to take the conduct of his affairs in his own hands. For that purpose he appealed to the Chamber Judge to restore him to the position he would have occupied, but for this order which, he contended and rightly, was most detrimental to his interest and for the making of which there was no necessity and not the smallest justification. Is the Judge powerless to give relief when he feels convinced that the order was improperly obtained and erroneously made? As put by Mr. Inverarity, suppose that the minor was 19 years of age when the order for the appointment of his guardian was made. Could it be contended that he was not entitled to come to the Judge who made the order when he came to know of this order and ask him to rescind the order, and would the Judge hesitate for one moment to rescind the order so improperly obtained? I am fortified in this view of the matter from the fact that on searching the records of this Court many precedents will be found where an order made is often varied or altered and in some

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instances wholly set aside and a new order made. I came across recently an instance in which Mr. Justice Tyabji, after having made an order, set it aside and made another order in the matter of the same minor.

The Guardians and Wards Act makes no provision for setting aside an order made under the Act, but judging from the analogy of English practice I have no doubt that in these miscellaneous matters the Judge sitting in Chambers and making orders on petitions and applications has the power to vary, alter, modify or set aside his own orders when he finds that the order is one that requires in the interests of justice to be dealt with in that way. In Daniell's Chancery Practice, 7th edition, at page 1303, on the authority of several cases collected there the following propositions are laid down :—

"If there is any irregularity in the order, or it has been obtained upon any false suggestion, or by the suppression of any material fact, it will be discharged . . . . . although on the merits it would have been proper to make the order." And again :—"If an order has been irregularly obtained . . . . . any party affected by it may procure its discharge at the costs of the person who obtained it."

In the case of *St. Victor* v. *Devereux*[1] an order made *ex parte* was discharged on the ground that material facts were not stated in the petition on which the order was made. The Master of the Rolls Lord Langdale there says :—"There are few things more important than that parties who apply for orders of course should fairly state all the circumstances which really ought to be considered. It is upon the allegations made upon petitions for orders of course that such orders are made, and if those allegations omit anything material, and which ought to be taken into consideration, the order so obtained is an irregular order." In this case the order was an order allowing the plaintiff to sue in *forma pauperis*. The Court held that there were material circumstances which ought to have been disclosed in the petition and the order was discharged because these circumstances were not disclosed. This principle was emphasised in a later case,

(1) (1843) 6 Beav. 584 at p. 588.

Holcombe v. *Antrobus*[1], where the Master of the Rolls says:—"Upon occasions of this kind there are three rules of which I have taken notice. First, a party obtaining an order of course is bound to state truly, every fact which is material to the question, whether the order ought to be granted as of course or not."

In *De Feucheres* v. *Dawes*[2] an *ex parte* order was set aside on the ground that an alleged previous reference to arbitration although the fact was disputed was not mentioned when the order for taxation was obtained.

In all these cases there have been distinctions between orders of course and special orders and they depend on technical rules of procedure in the English Courts. I have however referred to these cases on account of the principle they lay down in unmistakeable terms. The appointment of a guardian to a minor when the same is necessary for the protection and safety of his person or property is a matter of course. Under our Rules all applications under the Guardians and Wards Act are made in Chambers. It is possible that when a parent makes the application ostensibly in the interests of her own child as in this case the Judge hearing the application does not scrutinise the allegations of the petition very minutely. This petition which the first defendant's mother was made to present to the learned Judge in Chambers violates the principles laid down in the cases I have referred to above in that it *suggests* a false reason for the application although such reason is not actively asserted. The scheme of the whole petition seems to be to create on the mind of the Judge an impression that it was necessary to appoint Mathurabai a guardian of the property of her minor son in order to rescue his property from the grasp of other people who had wrongfully taken possession of that property. Paragraph 11 is most disingenuous. It says:—"Your petitioner as next friend and natural guardian is taking the necessary steps against the said Bhagirthibai to recover possession of the said properties by filing a suit against her in this Honourable Court." On reading this paragraph the first impression that would be produced on the

(1) (1845) 8 Beav. 405 at p. 412.

(2) (1843) 11 Beav. 46.

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mind of the Judge would be that the appointment of the petitioner as guardian of the minor's property was the first step towards the filing of that suit and that it was a necessary step before a suit could be filed. It appears however from the affidavit of Mathurabai, affirmed on the 23rd of January 1907, that on the same day that she affirmed the petition she affirmed her plaint in Suit No. 153 of 1905 and that on a subsequent date a Receiver of the property was appointed by the Court on her application. I think it was the duty of the petitioner to have stated in the petition that her plaint had just then been, or was ready to be, affirmed and that she was applying for a Receiver, and that simultaneously with the petition she was filing a suit as the next friend of her minor son. If these facts were clearly stated the Court would have seen the utter futility of appointing a guardian of a boy who would have attained his majority in about seventeen or eighteen months after the date of the petition. As the circumstances then existed there was not the smallest necessity for the appointment of a guardian. The order requires the guardian to give security to the extent of Rs. 1,90,838. The petitioner was a widow without any property of her own. The whole property of her husband's family was involved in impending litigation. She could only find hired security by paying large sum of moneys as commission out of the property which she claimed to belong to her minor son. Could such an order be said to be for the welfare of the minor and that too when there was absolutely "no cause which led to the making of this application"? The order was made behind the back of the minor. He was not represented and not heard. He could only be heard after he attained majority according to *his* contentions. The only course open to him was to come before the Judge in Chambers and represent how unjustly he had been dealt with, and it would be a positive scandal if the only answer the Judge could give, according to Mr. Setalvad's contention, was:—

"No doubt the order ought not to have been made, but once it is made I am powerless to give you any relief and there is no provision of law whereby the wrong done to you behind your back can be redressed."

It must be remembered that it has not been argued before me that the order of the 10th of March 1905 was a necessary or proper order, that it was for the welfare of the minor that the order should be made, or that there was any cause whatever for the making of the order. All that Mr. Setalvad has argued is that rightly or wrongly the order was or has been made, that I had no right to sit in appeal on the order made by another Judge, and that I had no jurisdiction to set it aside. On a very careful consideration of all the arguments addressed to me, the impressions formed by me in the first instance that the order was improperly obtained and ought never to have been made are considerably emphasised. The doubts expressed by me in my previous judgment as to my power to set aside the order have on maturer consideration been removed from my mind and I am of opinion that the Judge in Chambers has the power to rescind, recall, or set aside, an order made under the Guardians and Wards Act if he is satisfied that the order is one that ought not to have been made.

The second head of Mr. Setalvad's arguments, I confess, is one that requires much consideration and the question raised by him is not free from difficulties. He argues that once the order has been made—no matter what is subsequently done, whether the order is varied, suspended, or wholly discharged—under the provisions of section 3 of the Indian Majority Act the period of minority is extended to 21 years. In support of his arguments he has relied on the following cases: *Khwahish Ali* v. *Surju Prasad Singh*[1], *Rudra Prokash Misser* v. *Bhola Nath Mukherjee*[2], *Gordhandas* v. *Harivalubhdas*[3], *Shivram* v. *Krishnabai*[4] and *Gopalchunder Bose* v. *Gunesh Chunder*[5].

In the first of these cases—*Khwahish Ali* v. *Surju Prasad Singh*[1]—the facts are peculiar. It appears that a guardian was appointed for the plaintiff in the first instance but the certificate of guardianship was subsequently cancelled on the minor attaining the age of 18 years on the ground that the minor had attained his majority at that age. Mr. Justice Oldfield observes

(1) (1881) 3 All. 598.
(2) (1886) 12 Cal. 612.
(3) (1896) 21 Bom. 281.
(4) (1906) *ante* p. 80.
(5) (1906) 4 C. L. J. 412.

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that this was done in violation of the provisions of section 3 of the Indian Majority Act and the Court held that "the removal of the guardian before the minor attains the age of 21 years cannot take his case out of the operation of section 3" of the Indian Majority Act. In this case there was no question whatever of the propriety of the order in the first instance and the subsequent cancellation of the certificate of guardianship was manifestly erroneous.

In the case of *Rudra Prokash Misser* v. *Bhola Nath Mukherjee*[1] it appears that the District Court appointed the Collector of the District as the manager of the minor's estate. The Collector subsequently withdrew from the guardianship and in the words of the judgment "resigned his trust." On the minor attaining the age of 18 years it was contended on his behalf that he was entitled to a certificate as a person "*sui juris*." The Court held that "a guardian having been once appointed he must continue to be a minor until he reaches the age of 21 whether the original guardian continues to be his guardian or not." Here again there was no question of the propriety or otherwise of the original order appointing the Collector guardian of the minor's property, and I do not think these cases touch the point in this case.

The case of *Gordhandas* v. *Harivalubhdas*[2] was a reference from the Presidency Small Cause Court. The facts as they appear from the case submitted by the Judge of the Small Cause Court are in this case also very peculiar. It appears that in 1884 by a decree of the High Court one Parbhudas was appointed guardian of the person and property of the minor. By an order made in 1890 Parbhudas was removed from his office and one Ramdas was appointed guardian of the minor's person and Parbhudas was ordered to hand over the minor's property to Mr. Watkins who had been appointed a Receiver in the original High Court suit. In 1891 Ramdas was discharged from his office as guardian of the minor's person and no other guardian was thereafter appointed. The minor was at this time 18 years and 10 months old. In 1892 when the

(1) (1886) 12 Cal. 612.

(2) (1896) 21 Bom. 281.

minor was 19 years of age he applied to the Court that Mr. Watkins should be ordered to hand over all his property to him on the ground that he was 19 years of age and was competent to manage his estate. The High Court made the order. The minor was sued in the Small Cause Court on a promissory note executed by him when he was 19 years and 4 days old. He there pleaded minority and although he failed in the Small Cause Court he was successful in the High Court. The facts of this case are, as I said above, very peculiar and the order of the High Court directing the Receiver to hand over the minor's property when he was only 19 years of age is difficult to understand having regard to the fact that by its own decree the Court had appointed a guardian of his property. One thing conspicuously clear in this case also is the fact that there was no suggestion at any time that the original order of appointment of a guardian of the person and property of the minor was not a right or proper order. In considering the question before me now in this case I should have felt that this case presented no difficulty except for one sentence in Mr. Justice Strachey's judgment which makes one pause and consider its true import and meaning. Almost at the end of his judgment his lordship says: "And we should not be justified in reading into the section an exception that this provision," referring to section 3 of the Indian Majority Act, "shall not apply where the certificate of guardianship was subsequently *cancelled*." On a careful study of the facts of this case and of the language of the judgments of both the learned Judges it appears to me that when Mr. Justice Strachey uses the word *cancelled* he refers to the various proceedings whereby one guardian was removed and another guardian of the person was substituted and the Receiver in the suit took the place of the guardian of the minor's property. The learned Judge must have had in his mind the order of the Court giving the minor possession of his property when he was only 19, the practical effect of which was that the original order became inoperative and was of no effect after the order handing over the minor's property to himself. It is noteworthy that the original order of appointment of the guardian of the property and person of the minor was never challenged—its propriety

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never appears to be questioned and it had not at any time *been cancelled or set aside* and I think it is a fair inference to say that Mr. Justice Strachey, when he speaks of cancellation, refers to the subsequent orders which merely varied the operation of the original order of the appointment of a guardian. I have—not without anxious consideration—come to the conclusion that the facts in this case are very distinguishable from the facts in the present case and that this case does not touch the question which arises in these proceedings and is now under my consideration.

Mr. Justice Aston's judgment in the case of *Shivram* v. *Krishnabai*[1] I do not think has much bearing on the question before me, and Mr. Justice Stephen's judgment in the case of *Gopalchunder* v. *Ganeshchunder*[2] refers to the question of security to be furnished by a guardian, and the effect of non-compliance with that portion of the order which requires a guardian to give security. I do not think any useful purpose will be served by a lengthened discussion of the last two cases.

In not one of the cases relied on by Mr. Setalvad has there been the faintest suggestion that the original order appointing a guardian was improperly obtained or erroneously made. In none of the cases the propriety of the original order has been questioned and in none of these cases has it been contended that the original order was one that ought never to have been made.

I have failed to find any Indian case on the point now under consideration and Mr. Inverarity has not cited any Indian authority on this point but he placed reliance on the judgment of Mr. Justice Wright in *In re Newman*[3]. In that case it seems that a receiving order was made against a trustee in bankruptcy but the same was very soon afterwards rescinded on the ground that it ought never to have been made. The learned Judge held that "the receiving order was rescinded *ab initio* and ought to be treated as though it never had been made." He held that the trustee was restored to his original position.

As the result of all these considerations I have come to the conclusion that the first defendant Anandrao Bhai is not a

(1) (1906) *ante* p. 80. (2) (1906) 4 C. L. J. 412.

(3) [1899] 2 Q. B. 587.

minor. Under section 443 of the Civil Procedure Code I have to be satisfied that the first defendant is a minor before I could appoint a guardian *ad litem*. I am satisfied that he is not a minor and I refuse the application.

In considering the question of costs it is important to consider whether this was a *bona fide* application made by the plaintiff for the protection of his own interests. Mr. Setalvad, when asked why his client was so anxious to have the first defendant declared a minor, said his client wanted to guard against the first defendant pleading minority and vitiating all the proceedings in the suit after his client gets his decree. This is much too far-fetched. The real reasons for the violent efforts made to have the first defendant declared a minor are not far to seek. The estate to which the first defendant is declared absolutely entitled consists of several immoveable properties. The Special Commissioner is in possession of the whole of the estate. He is invested with power to sell the properties. He has purported to sell some of these properties under the power of sale conferred upon him. The Special Commissioner, in certain proceedings which took place before me not very long ago, was charged with selling the first defendant's property at an undervalue and dividing the profits with Dadabhai Narayen Dhume, a solicitor's clerk. This is the same man who is referred to by the first defendant's mother in the 5th paragraph of her affidavit affirmed on the 23rd January 1907 as being the man who told her that it was necessary for her to get herself appointed a guardian of the property and person of her son. The sales made by the Special Commissioner are all challenged by the first defendant. The first defendant appears to be anxious to have the Special Commissioner removed and to be put in possession of his own property. If the first defendant is declared a minor he would not be able to take possession of the properties, and his mother, as guardian under the order of the 10th of March 1905, could not touch these properties till she furnishes security to the extent of one lákh ninety thousand odd rupees—a thing which she is unable to do. The effect of an order appointing a guardian *ad litem* of the first defendant, as I am asked to do now, would be to render the first defendant impotent against certain

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people who are working against him and to coerce him into some sort of unfair settlement. The plaintiff or those behind him are anxious that litigation in Suit No. 153 of 1905 should not come to a termination. A perusal of paragraph 17 of the plaint and the affidavit of the plaintiff affirmed on the 21st of January 1907 and made in support of an intended application for an injunction leaves no doubt in my mind as to the real object of the plaintiff. Whatever may have been the legal aspect of the points raised by this application, I have no doubt in my mind as to real nature of the application. It has no merits. The apprehension expressed by the plaintiff as to the first defendant hereafter pleading minority is a mere pretence. The application is made from ulterior and improper motives. I dismiss the application, discharge the notice, and refuse to appoint a guardian *ad litem* to the first defendant. I order the plaintiff to pay first defendant all costs of this application and notice and I certify that this was a fit case for the employment of counsel.

Attorneys for the plaintiff:—*Messrs. Khanderao, Laud and Mehta.*

Attorneys for the defendant:—*Messrs. Bicknell, Merwanji and Romer.*

B. N. L.

ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., and Mr. Justice Batty.

1907.
April 18.

BHAISHANKAR NANABHAI, PLAINTIFF, *v.* THE MUNICIPAL CORPORATION OF BOMBAY AND OTHERS, DEFENDANTS.*

City of Bombay Municipal Act (Bom. Act III of 1888), section 33—Election of Councillor, validity of—Applicant's right to question election—"Election," meaning of—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election petitions—Jurisdiction of High Court—Civil Procedure Code (Act XIV of 1882), section 11.

Under section 33 of the City of Bombay Municipal Act, 1888, an applicant can question the election of every candidate on the ground that the election as a whole was invalid, for the section, after specifying two permissible grounds

* Original Suit No. 313 of 1907.