

THE
PROBATE, MINORITY, LUNACY.

AND
CERTIFICATE ACTS.

CONTAINING

MINORS' ACT XL of 1358 *as affected by* ACTS XIV of 1870,
IV of 1879; MINORS' AMENDMENT ACT IX of 1861;
The CURATOR'S ACT XIX of 1841; The MADRAS
MINORS' ACTS XXI of 1855 and XIV of 1858; The
BOMBAY MINORS' ACT XX of 1864; The LUNATICS'
ACT XXXV of 1858; The PROBATE ACT V of 1881 *as
amended by* ACTS VI and VII of 1889; and the SUC-
CESSION CERTIFICATE ACT VII of 1889.

WITH

THE LATEST AMENDMENTS ON ALL ACTS.

AND

WITH COPIUS NOTES

OF

DECIDED CASES UP TO NOVEMBER 1889;

&c., &c., &c.,

AND

A FULL INDEX.

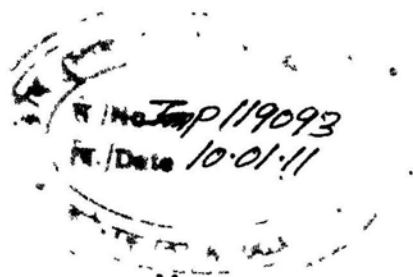
BY

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ACT NO. XL OF 1858.

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APPENDIX.

ACT NO. XL OF 1858.

PASSED BY THE LEGISLATIVE COUNCIL
OF INDIA.

*(Received the assent of the Governor General
on the 11th December 1858.)*

An Act for making better provision for the
care of the persons and property of minors,
in the presidency of Fort William
in Bengal.

*[As affected by Act No. XIV of 1870 and
Bengal Acts No. IV of 1870 and No. IX
of 1879.]*

WHEREAS it is expedient to make better
provision for the care of the
persons and property of minors not brought
under the superintendence of the Court of
Wards; It is enacted as follows:—

Act XL of 1858 has been declared to apply to the whole
of the Lower Provinces of Bengal except the Scheduled
Districts, *vide* section 6 and the fourth schedule (b) of Act
XV of 1874. It has also been declared to apply to the whole
of the North Western Provinces except the scheduled Dis-
tricts *vide* section 7 and the fifth schedule (b) of Act XV of
1874, also to Punjab *vide* Schedule I Act IV of 1872; also to

British Burma *vide* s. 95. Act XVII of 1875 ; also to Oudh see Act XVIII of 1876.

"In the title for 'the Presidency of Fort William in Bengal' read "Oudh."

In section 2 for "estates paying revenue to Government" read "mahals assessed to revenue or held revenue free." *vide* Act XVIII of 1876.

By Government of India Notification No. 51, J dated the 7th January 1181, Act XL of 1858 was also declared to be in force in the Scheduled Districts of Ajmer and Mērwara ; and to the District of Sylhet in the Chief Commissionership of Assam by Notification No. 1152, dated 3rd October 1879 published in the Gazette of India, dated the 4th October 1879.

It was also in force in the Central Provinces, by Act XX of 1875, but has since been repealed by Act XVII of 1885.

Some of its sections have also been locally repealed as Bengal by Bengal Act IX. of 1879, *vide* note under s. 12 *post*.

1. [*Repealed by Act No. XIV of 1870.*]

2. Except in the case of proprietors of estates paying revenue to Government who have been or shall be taken under the protection of the Court of Wards, the care of the persons of all minors (not being European British subjects) and the charge of their property shall be subject to the jurisdiction of the Civil Court.

Care of persons
and property of
minors not under
Court of Wards.

Section 2 of Act XL of 1858 does not preclude the natural and legal guardian of a Hindu minor from dealing with the minor's property by mortgage or otherwise, within the limits allowed by the Hindu law, without having acquired a certificate of administration from the Civil Court, *Heit Sing v. Thakoor Sing* (4 N. W. P. H., 57.)

See on this point the case reported under s. 18 (I. L. R., 4 Cal., 229.)

Where a testator makes due provision for the guardianship of his minor son Act XL of 1858 does not contemplate

the interference of the Civil Court in its summary jurisdiction.

Anund Coomār Gangooly v. Rackhal Roy (8 W. R., 278.)

3. Every person who shall claim a right to have charge of property in trust for a minor under a will or deed, or by reason of nearness of kin or otherwise, may apply to the Civil Court for a certificate of administration;

and no person shall be entitled to institute or defend any suit connected with the estate of which he claims the charge until he shall have obtained such certificate:

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.

The making of an order appointing guardian under Act XL of 1858, and not the subsequent taking out of the certificate, is that by which a guardian is appointed of the person and property of a minor within the meaning of s. 3 of the Indian Majority Act.

Chunee Mul Johary v. Brojo Nath Roy Choudhury (I. L. R., 8 Cal., 967.)

But see the other cases on this point quoted below.

A certificate of guardianship, obtained under s. 3 of Act XL of 1858, takes effect from the time it is issued, and not from the date of the order directing its issue.

Sahai Nund v. Mungniram Marwari (I. L. R., 12 Cal., 542.) followed.

Nwbat Roy v. Lala Kedar Nath (I. L. R., 13 Cal., 219.)

A certificate of guardianship under Act XL of 1858 takes effect not from the date when it is applied for, nor when an order granting it is passed, but from the date when it is actually issued. Therefore where an application for a certificate was made in 1877, and an order granting it was passed in December 1879, but the certificate was not issued until December 1881. Held that the minor, in respect of whose property the certificate was applied for who had between the date of the application and the issue of the certificate attained the age of 18 years, and signed a promissory note, was not entitled to take advantage of s. 3 of the Majority Act 1875, and set up the plea of minority as a defence to a suit on the note.

Stephen v. Stephen on appeal (I. L. R., 9 Cal., 901.)

See also *Stephen v. Stephen* (I. L. R., 8 Cal., 714.)

Where an application is made for the appointment of a guardian under Act XL of 1858, and an order is passed appointing a person to be guardian of the minor, even though no certificate be taken out by the person so appointed, the minor becomes a Ward of Court, and the period of his minority is extended to 21 years.

Choone Mul Johary v. Brojo Nath Chowdhury (I. L. R., 8 Cal., 967,) followed.

Girish Chunder Chowdhury v. Abdul Saten (I. L. R., 14 Cal., 55.)

No judgment or order passed in a suit, to which a minor subject to the provisions of Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate, or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor, under s. 3 of Act XL of 1858, should be formally placed on the record. *Mrinenoyi Dabya v. Jagodishuri Dabya* (I. L. R., 5 Cal., 450)

But see (I. L. R., 12 Cal., 131.)

Section 440 of the Civil Procedure Code, read with s. 3 of Act XL of 1858, does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff.

Newaj v. Maksud Ali (I. L. R., 12 Cal., 131.)

A suit was brought against a mother "for self and as guardian of A and B, minor sons of C deceased," at a period when Act VIII of 1859 was in force. The mother had not taken out a certificate under Act XL of 1858 and no

permission was recorded by the Court allowing the mother to defend on behalf of the infants under the provisions of s. 3 of that Act. A decree was made in the suit, and in execution thereof certain property belonging to A and B was sold and purchased by X, the decree-holder. Subsequently on A's coming of age, A and B by A as his next friend, instituted a suit against X and their mother to recover the property so purchased by X.

Held, that under the provisions of Act VIII of 1859 it was not necessary to formally record sanction to the mother to defend under s. 3 of Act XL of 1858, and that the fact of sanction having been given might be presumed by the Court, and that on the facts of the case such presumption was warranted.

Held, also, that though A and B were not properly described in the previous suit, it was a mere defect in form, and it did not affect the merits of the case, being in accordance with the prevailing practice at the time when the suit was brought, and that there is no authority for saying that, when minors have been really sued, though in a wrong form, a decree against them would not be valid. *Jogi Sing v. Kunj Behari Singh* (I. L. R., 11 Cal., 509.)

In a suit brought on behalf of a minor by his next friend, it is not necessary for the next friend to have a certificate under Act XL of 1858, provided he have in fact permission of the Court to sue.

Where a suit was brought in the name of A, for self and as guardian of her daughter B, a minor, and it was objected that it should have been brought in the names of A and of B, a minor by her next friend and guardian.

Held, that as no one was misled or injured by the improper form of the plaint, the objection ought not to be held fatal, but the decree must be taken to be in favour of A and of B suing by A, as if the suit had been properly framed. *Alim Buksh Fakir v. Jhalo Bibi* (I. L. R., 12 Cal., 48.)

A co-sharer in ancestral family estate, under the Mitakshara law, the co-proprietors being minors, though he may have power to manage the estate, is not in consequence, the guardian of such minors for the purpose of binding them by the execution of a bond charging the estate: nor is the eldest male member of the family, being of full age, guardian of such minors for the purpose of defending suits brought against them for money advanced in respect of

the estate, unless he has obtained a certificate of administration under Act XL of 1858, s. 3.

Durgapershad v. Keshopershad Singh (I. L. R., 8 Cal., 656.)

In a suit intended to be brought against some minors, the defendants were set out in the heading of the plaint as "Sharoda Sundori Debya, widow of Chundra Kanta Chuckerbutty, deceased, mother and guardian of the minors" (setting out their names.) At the filing of the plaint, the plaintiff applied for and obtained an order, making Sharoda guardian of the minors for the purposes of the suit. She was not, however, guardian of the property and persons of the minors under Act XL of 1858.

Held, that the minors were not parties to the suit; that the order making Sharoda guardian *ad-litem* was not made in a suit in which the minors were defendant; and that the suit must be dismissed as against the minors.

Held, also, that neither the Code of Civil Procedure nor the proviso of s. 3 of Act XL of 1858, give a plaintiff any power to institute a suit against a person named by himself as guardian *ad-litem* on behalf of a minor, nor do they give to the Court, the power of transferring by a mere order made *ex parte*, an irregular proceeding such as the one above-mentioned into a suit against the minor.

Gura Churn Chuckerbutty v. Kali Kissen Tagore (I. L. R., 11 Cal., 402.)

B, a Hindu governed by the Mitakshara law, died leaving two minor sons J and K, and also a widow L and two minor sons by her; the mother of J and K having predeceased him. On J's attaining majority, the Court of Wards, which had taken possession of all the property, withdrew from the management; and L then applied under Act XL of 1858, and obtained a certificate with respect to the shares of K and her two minor sons. Subsequently K having attained majority, his share was excluded from the operation of the certificate. On the death of J, leaving H, his widow, and an infant son by her, H applied for a similar certificate, under Act XL of 1858, with respect to the property of her son, and it appeared that K was incapable of managing the property.

Held, that though the certificate granted to L had been improperly obtained, H was not entitled to one, as, no partition having taken place since B's death the property was still the joint family property.

Held, also, that neither the granting of the certificate

to L, nor the registration of the specific shares of each of the co-owners under the provisions of the Land Registration Act, amounted to a partition such as to justify the Court in granting the certificate asked for.

Gowrah Koeri v. Gujadhhar (I. L. R., 5 Cal., 219,) followed.

Hoolash Koor v. Kasseo Proshad (I. L. R., 7 Cal., 369.)

K. B., a Hindoo governed by the Mitakshara law died, leaving two sons, G. P. and K. P., a minor, and a widow G. K. the mother of K. P.

Held on the application of G. K. for a certificate to take charge of the estate of her minor son K. P. under Act XL of 1858, that as there was no evidence that K. P. was entitled to any separate estate, she was not entitled to such a certificate.

Held, also, that if occasion should arise, a suit might be filed in the name of the minor by his mother as his next friend without her having first obtained a certificate under Act XL of 1858 and without her having previously obtained permission from any Court.

Goerah Koeri v. Gajadhhar Proshad (I. L. R., 5 Cal., 219.)

A certificate under s. 3 is purely an authority for the administration of property and ought not to be issued where there is neither present right nor prospective possession.

Nobin Shaha v. Raj Naran Shaha (9 W. R., 582.)

Act XL of 1858 declares that a person shall not be competent to institute a suit in Court in respect of property of which he claims the charge until he shall have obtained a certificate; but not that every act of a guardian who has not such a certificate shall be null for the want of one.

Shooghury Koer v. Boshist Sing (8 W. R., 331.)

A manager has no authority to deal with the claims or debts and liabilities attaching to the estate of a minor without having taken out a certificate under Act XL of 1858. *Tasneef Hossein v. Sookhoo* (14 W. R., 453.)

Without a certificate under Act XL of 1858 a Court may refuse to hear even a natural guardian of right. When the Court in the exercise of the discretion vested in it, does hear him, the absence of the certificate will not vitiate the proceedings. The private acts of a natural guardian without a certificate under Act XL of 1858 are not vitiated by law.

Lala Bhoddmul v. Lala Gourees Sunker (4 W. R., 71.)

Sec. 3, Act XL of 1858 gives discretion to the Court to admit a party to sue without a certificate. (2 W. R., 219.)

See also on this point (6 W. R., Mis. 116,) (13 W. R., 202,) (17 W. R., 492,) (and 25 W. R., 97.)

Where a person representing herself^o as a guardian neither took out a certificate under Act XL of 1858, nor obtained the permission of the Court under s. 3 of that Act to appear in the suit without a certificate.—*Held*, that the minor was not bound by any act of the alleged guardian.

Sreenath Koondoo v. Huree Narain Muddock (7 W. R., 399.)

The uncle of a minor instituted a suit on his behalf without obtaining the formal permission of the Court in which such suit was instituted to sue on his behalf. The uncle's right to sue was denied by the defendant; and the first of the issues framed was whether he had such right. The Court decided that he had such right. *Held*, in second appeal, that, although permission to sue or defend a suit on behalf of a minor should be formally granted, to be of effect, such decision might fairly be accepted as in this case a sufficient and effective permission to the uncle to sue, and he was competent to maintain such suit.

Mrinmayi Dabya v. Jogodishuri Dabya (I. L. R., 5 Cal., 450.) referred to.

Pirithi Sing v. Lobhan Sing (I. L. R., 4 All., 1.)

Under s. 3 of Act XL of 1858, the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act, to defend a suit on the minor's behalf, as guardian of such minor.

Baldeo Das v. Gobindo Shanker (I. L. R., 7 A., 914.)

The mother of a minor who had not obtained a certificate under Act XL of 1858, instituted a suit on behalf of the minor for some property of small value. She did not ask the Court in which she instituted the suit for permission to institute it, as required by s. 3 of that Act, but the Court entertained it, the defendant not raising the objection that it had been instituted without permission, and it was decided on the merits in favour of the minor. *Held*, that, under these circumstances, it must be taken, notwithstanding there was no order allowing the mother to sue, that the suit was instituted with the Court's permission. ●

Kedar Nath v. Debi Din (I. L. R., 4 All., 165.)

The mother of a minor, who did not hold a certificate under Act XL of 1858, was sued on behalf of the minor. She did not obtain permission to defend the suit on behalf of the minor. *Held*, that, under these circumstances it must be inferred that the Court had given her permission to defend

the suit, as required by s. 3 of Act XL of 1858, and therefore the decree made against her in the suit as representing the minor was binding on the latter.

Lanki v. Dharam Chand (I. L. R., 4 All., 177.)

In a suit conducted on behalf of a minor by a relative, the absence of the certificate of guardianship required by s. 3 of the Bengal Minor's Act (XL of 1858,) is not a fatal defect; and the fact of the Court allowing such a suit to proceed must be taken as implying that the necessary permission has been given. Even if such permission has not in fact been given, the irregularity is covered by s. 578 of the Civil Procedure Code.

Bhaba Pershad Khan v. The Secretary of State for India (I. L. R., 14 Cal., 159,) followed.

Parmeshar Das v. Bela (I. L. R., 9 All., 509.)

Although the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order-sheet, there is, nevertheless, nothing in the nature of the sanction provided by s. 3 of Act XL of 1858, which takes it out of the general rule of evidence, that sanction may be proved by express words, or by implication.

Where on construction of the plaint and the pleadings, it is found that the minor is the real plaintiff, the mere fact of his not having been properly described in accordance with s. 440 of the C. P. Code is no ground for setting aside a decree passed in the suit.

Bhaba Pershad Khan v. The Secretary of State (I. L. R. 14 Cal., F.B. 159.)

4. Any relative or friend of a minor in

Who may apply to Court to appoint person to take charge of minor's property. respect of whose property such certificate has not been granted, or, if the property consist in whole, or in part of land or any interest in land, the Collector of the district, may apply to the Civil Court to appoint a fit person to take charge of the property and person of such minor.

Under sections 4, 6 and 7 the Court has power to appoint a guardian other than the father of a minor for the purpose of instituting suits, and protecting the property of the minor.

Mussamat Etwari v. Ram Narayan Ram (4 B. L. R. An. 71)

5. If the property be situate in more than one district, any such application as aforesaid shall be made to the Civil Court of the district in which the minor has his residence.

Application where property in more than one district.

The word "residence" used in s. 5 Act XL of 1858 is not the place where the minor may be dwelling at or about the time when the application for a certificate is made, but the paternal family house, or the family residence of the minor, in which every member of the family has an interest and in which they usually reside, though circumstances may arise in which it might be taken to mean otherwise.

Mahomed Hossein v. Akbur Hossein (17 W. R., 275.)

6. When application shall have been made to the Civil Court either by a person claiming a right to have charge of the property of a minor, or by any relative or friend of a minor, or by the Collector, the Court shall issue notice of the application and fix a day for hearing the same.

Procedure of Court on application

On the day so fixed or as soon after as may be convenient, the Court shall enquire summarily into the circumstances and pass orders in the case.

Provided always that it shall be competent to the Civil Court to direct any Court subordinate to it to make such enquiry and report the result.

Reference to subordinate Court,

The summary inquiry provided in s. 6 refers to the grant of the certificate to the parties claiming it, but no part of the act allows third parties to demand an inquiry into

matters which have nothing to do with the genuineness of the grant. *Meltoon Bibi v. Gibbon* (12 W. R., 101.)

One manager cannot shift off the responsibility from himself and resign the appointment without the provision of s. 6, being duly carried out. *Jogodumba koer v. Mircha koer* (17 W. R., 269.)

7. If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the Court shall grant a certificate of administration to such person.

If there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative.

The Court may also, if it think fit (unless a guardian have been appointed by the father), appoint such person as aforesaid, or such relative or any other relative or friend of the minor, to be guardian of the person of the minor.

An administrator holding a certificate under s. 7, is not bound to file in Court periodical accounts of money realized and disbursed on account of the minor.

In re Sonkally Koonar (6 W. R., Mis., 53.)

An application for the removal of parties appointed to take charge of the estate of a minor under s. 7 must be supported by proof of malversation or misconduct such as would afford sufficient ground for removal.

Rajesures Dabia v. Jogendro Nath Roy (23 W. R., 278.)

See s. 21 (7 W. R., 522.)

S. 7 looks as much to the fitness of the relative as to his propinquity; and when two relatives claim the right to administer, the court is at liberty to disregard the latter qualification, and look to the former.

Akima Bibee v. Azeem Sarung (9 W. R.; 334.)

In the grant of a certificate to a guardian under Act XL of 1858, unless under peculiar circumstances, fitness is to be preferred to mere relationship. *Aman Khan v. Hosheena Khatoon* (9 W. R., 548.)

See also on this subject 4 W. R., Mis., 22 and 9 W. R., 555.

The mere fact that a near relative who desires to have charge of the property is a *Purda-nusheen* is not of itself a disqualification such as would take away the right to claim a certificate under s. 7.

Kooroopool Koer v. The Collector of Shahabad (20 W. R. 432.)

A manager appointed to the estate of a minor cannot in any way get rid of or resign that trust without the permission of the Court, and without duly accounting to his successor for all moneys received and disbursed by him.

Kalee Pershad v. Purno Debia (15 W. R., 398.)

A person claiming a right to have the charge of the property of a minor by virtue of a will is entitled, if the will be a genuine instrument, to a certificate of administration, notwithstanding the existence of a natural guardian of the minor. *Bhubun Mohinee v. Purno Chunder* (17 W. R., 99.)

8. The Court may call upon the Collector or Magistrate for a report on the character and qualification of any relative or friend of the minor who may be desirous or willing to be entrusted with the charge of his property or person.

9. If no title to a certificate be established to the satisfaction of the Court by a person claiming under a will or deed, and if there be no near relative willing and fit to be entrusted with the charge of the property of the minor, and the Court shall think it to be necessary for the interest of the minor that provision should be made by the Court for the charge of his property and person, the Court may proceed to make such provision in the manner hereinafter provided.

Under Act XL of 1858, s. 9, the Judge has no power to appoint the Collector as manager of the estate of the minor, until he is satisfied that no person has established title to a certificate under a will or deed, and that there is no relative willing and fit to be entrusted with the charge of the property, and both these alternatives must be proved to the Court in the ordinary way by evidence brought before the Court.

Hyder Reza v. Collector of Purneah (22 W. R., 490.)

10. If the estate of the minor consist of moveable property or of houses, gardens or the like, the Court may grant a certificate to the Public Curator appointed under section 19, Act XIX of 1841 (*for the protection of moveable and immoveable property against wrongful possession in certain cases*), or, if there be no Public Curator, to any fit person whom the Court may appoint for the purpose.

The powers given by ss. 10, 11, and 12 Act XL of 1858, only accrue upon the happening of the contingency which is mentioned in s. 9. (20 W. R., 432.)

11. Whenever the Court shall grant a
Appointment of certificate of administration
guardian. to the estate of a minor to
 the Public Curator or other person as aforesaid,
 it shall at the same time appoint a guardian to
 take charge of the person and maintenance of
 the minor.

The person to whom a certificate of ad-
 ministration has been granted, unless he be
 the Public Curator, may be appointed guardi-
 an.

If the person appointed to be guardian
Guardian's allow- be unwilling to discharge the
ance trust gratuitously, the Court
 may assign him such allowance, to be paid
 out of the estate of the minor, as under the
 circumstances of the case it may think suit-
 able,

The Court may also fix such allowance
Minor's allow- as it may think proper for
ance. the maintenance of the minor ;
 and such allowance and the allowance of
 the guardian (if any) shall be paid to the
 guardian by the Public Curator or other per-
 son as aforesaid.

12. If the estate of the minor consist,
 in whole or in part, of land
 or any interest in land, the
 Court may direct the Collect-
 or to take charge of the estate,
 and thereupon the Collector
 shall appoint a manager of

When Court may
 direct Collector to
 take charge of
 estate. Appoint-
 ment of manager
 and guardian
 thereupon.

the property of the minor and a guardian of his person, in the same manner and subject to the same rules in respect of such appointments and of the duties to be performed by the manager and guardian respectively, so far as the same may be applicable, as if the property and person of the minor were subject to the jurisdiction of the Court of Wards.

Sections 12, 14, 15 of Act XL of 1858, and so much of s. 21 of Act XL of 1858, as provides that the Civil Court may direct the Collector to take charge of an estate, are repealed by s. 2 Bengal Act IX of 1879.

When the estate of a minor consists in whole or in part of land, or any interest in land, and when such application is made, the Court can only proceed to act in accordance with the provisions of s. 12 of Act XL of 1858, and has no jurisdiction to grant another certificate to any fit person, such a course being confined to cases in which the property is of the description indicated by s. 10.

Sakhawat Ally v. Noorjehan Begum (I. L. R., 10 Cal., 429.)

See s. 3 (I. L. R., 7 Cal., 369.)

When an estate is placed under the control of the Collector under s. 12, the Civil Court has no jurisdiction to interfere with the Collector in the charge of that estate (16 W. R., 263.)

Where a certificate under Act XL of 1858, granted to the two widows of a deceased Hindoo, was recalled simply because, in consequence of their disagreement, joint management had become impossible and the District Judge refusing the application of the widow, who was the minor's mother to be the sole manager, directed the Collector under s. 12 to take charge,—*held*, that in the absence of any ground to remove her summarily, the Court was bound to grant the application of the minor's mother as the nearest relative, and to allow her the management until some cause to remove her was duly made out.

Nistarinee Dabee v. Collector of 24 Pergunnahs (23 W. R., 330.)

Where the joint property of an undivided joint family governed by the Mitakshara law is enjoyed in its entirety by the whole family, and not in shares by the members, one member has not such an interest therein as is capable of being taken charge of, and separately managed under the provisions of Act XL of 1858. *Sheo Nundun v. Ghunsan Koeree* (21 W. R., 143.)

See also 23 W. R., 206.

For duties of a manager appointed by the Collector under s. 12, and of a manager acting under the Court of Wards, see (10 W. R., 273.)

Where, on the application for the appointment of a manager to a deceased Rajah's estate, a Zillah Judge notwithstanding a contention as to extent of a minors interest passes an order strictly within the provisions of s. 12, Act XL of 1858, his successor acts without jurisdiction in specifying the shares of the minor.

— *Collector of Tirhoot v. Rajcoomar Deo Nandun Sing* (10 W. R., 218.)

Where a trust is created under a will for certain purposes mentioned in the will,—e. g., the maintenance of religious worship, charitable institutions, &c.,—the properties belonging to the trust cannot be taken charge of by the Collector under Act XL of 1858.

Rajessuree Debhya v. Jogendra Nath Roy (23 W. R., 278.)

Where two parties were fighting to get hold of the property of a minor who was likely to suffer if it remained in the hands of either, the Court ordered it to be made over to the Collector under s. 12, Act XL of 1858, with direction to appoint a manager and guardian. (17 W. R., 269.)

A Judge has no power to appoint a party to be the guardian of a minor and to direct the estate of the minor to be placed under the management of the Court of Wards. What he has the power under the s. 12, Act XL of 1858 is to direct the Collector to take charge of the estate, and then it will become the duty of the Collector to appoint a manager and a guardian in the same manner, as if the minor's property and person were subject to the Court of Wards. (23 W. R., 348.)

13. In all enquiries held by the Civil Court under this Act, the Costs of enquiries. Court may make such order as to the payment of costs by the persons on whose applica-

tion the enquiry was made, or out of the estate of the minor or otherwise, as it may think proper.

14. Whenever one or more of the proprietors of an estate which has come under the jurisdiction of the Court of Wards on account of the disqualification of all the proprietors, ceases to be disqualified, and the estate, in consequence, ceases to be subject to the jurisdiction of the Court of Wards, notwithstanding the continued disqualification of one or more of the co-proprietors, the Collector of the district in which the estate is situate may represent the fact to the Civil Court; and the Court, unless it see sufficient reason to the contrary, shall direct the Collector to retain charge of the persons and of the shares of the property of the still disqualified proprietors, during the continuance of their disqualification, or until such time as it shall be otherwise ordered by the Court.

The Collector shall in such case appoint a guardian for the care of the persons, and a manager for the charge of the property, of the disqualified proprietors, in the manner prescribed in section 12.

If the property be situate in more than one district, the representation shall be made by the Collector, who had the general management of the property

When Civil Court may direct Collector to retain charge of shares and persons of certain minors.

Provision for case of estates situated in more than one district.

under the Court of Wards, to the Civil Court of his own district, and the orders of the Court of that district shall have effect also in other districts in which portions of the property may be situate.

This section is locally repealed by Sec. 2 Act IX (B. C.) of 1879.

Under s. 14 of Act XL of 1858, an estate ceases to be subject to the jurisdiction of the Court of Wards when any of the co-proprietors attain majority; but the Judge may, on the application of the Collector, direct him to retain charge of the persons and shares of the still disqualified proprietors during the continuance of their disqualification or until such other time as may be otherwise ordered. (W. R. Sp., Mis., 2.)

15. The proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior Revenue authorities.

This section is locally repealed by Sec. 2 Bengal Council Act IX of 1879.

16. The Public Curator and every other administrator to whom a certificate shall have been granted under section 10 shall, within six months from the date of the certificate, deliver in Court an inventory of any immoveable property belonging to the minor, and of all such sums of money, goods, effects and things as he shall have received on account of the estate, together with a statement of all debts due by or to the same.

And the Public Curator and every such and annual other administrator shall accounts. furnish annually, within

three months from the close of the year of the era current in the district, an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate, and the balance in hand.

If any relative or friend of a minor or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement or of any annual account, the Court may summon the Curator or administrator and enquire summarily into the matter, and make such order thereon as it shall think proper, or the Court at its discretion may refer such petition to any subordinate Court.

17. All sums received by the Public Curator or such other administrator on account of any estate, in excess of what may be required for the current expenses of the minor or of the estate, shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

18. Every person to whom a certificate shall have been granted under the provisions of this Act may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all

Proceeding if accuracy of inventory or account be impugned.

Payment of surplus into treasury Investment

Powers of person to whom certificate granted, in management of minor's estate

just claims, debts and liabilities due to or by the estate of the minor.

But no such person shall have power to sell or mortgage any immoveable property, or to grant a lease thereof for any period exceeding five years, without an order of the Civil Court previously obtained.

No greater powers can be exercised by a *de facto* guardian who has not legally completed his right to manage a minor's estate, than can be exercised by a guardian duly appointed under Act XL of 1858, with reference to which Act his powers must be determined.

Abhassi Begum v. Moharanee Rajroop Coopwar (I. L. R., 4 Cal., 33.)

But see (I. L. R., 4 Cal., 76) and (I. L. R., 4 Cal., F. B., 929.) quoted below.

The mother and guardian of a Hindoo minor, though not a guardian appointed under Act XL of 1858, when acting *bona fide* and under the pressure of necessity, may sell his real estate to pay ancestral debts and to provide for the maintenance of the minor.

Soonder Narain v. Bennud Ram (I. L. R., 4 Cal., 76.)

The rules laid down in Act XL of 1858, from s. 18 downwards, apply only to certificated managers and to guardians appointed under the Act.

Section 18 applies in terms to a manager acting under a certificate, and to such manager only; it confers on him generally the powers of the owner, but in regard to acts of alienation beyond certain limits, it requires that his acts, in order to be valid, should have the previous sanction of the Court; such provisions are altogether unsuitable to the case of a manager entirely unconnected with the Court.

There is no indication in Act XL of 1858 of any intention to alter or affect any provision of Hindu or Mahomedan law, as to guardians who do not avail themselves of the Act. The scope of the enactment is merely to remove legislative prohibitions, to confer expressly a certain jurisdiction, and to define exactly the position of those who avail themselves of, or are brought under the Act, leaving persons to whom any existing rules of law apply, unaffected.

Ram Chunder Chuckerbutty v. Brojo Nath Mozumdar (I. L. R., 4 Cal., F. B. 929.) (4 C. L. R., 247.)

A mortgage of the property of a minor made by the administrator appointed under Act XL of 1858 is invalid unless the sanction of the Court has been previously obtained under s. 18 of the Act.

Where the administrator was sued, as representing the minor, by the mortgagee, and made no defence to the suit, and the property was sold, under a decree so obtained, to the mortgagee, by whom it was again sold to a third person, who knew that the administrator had executed the mortgage in that capacity,—*held*, that the decree did not protect the mortgagee, who purchased at the Court sale, nor her vendee from a suit by the minor for recovery of the property.

Debi Dutt Sahoo v. Subodra Bibee (I. L. R., 2 Cal., 283.)

A guardian to whom a certificate had been granted under Act XL of 1858, having obtained under s. 18, an order of a Court authorising the raising of money by mortgage of the minors immoveables, mortgaged accordingly. In the order so obtained, the rate of interest at which the money was to be raised was not specified. On a question whether, their being no proof of the necessity or expediency of agreeing to pay interest at a rate so high as 18 per cent, the agreement to pay at this rate was rightly set aside by the High Court, which decreed interest at twelve per cent.

Held, that the proper construction of the order, and the one most favorable to the lender, regarding the rate of interest was, that the guardian was authorized to borrow only at a reasonable rate of interest; and that consequently the decree of the High Court was right.

Gangapershad Saku v. Maharani Bibi (I. L. R., 11 Cal., 379.)

On an application under s. 18 of Act XL of 1858 for leave to deal with the property of an infant, the Civil Court is bound to determine the question whether the proposed mode of dealing with it would, if sanctioned be for the benefit of such infant: and the petition should contain all the materials reasonably required to enable the Court to decide that question.

The decision of Garth C. J., in (I. L. R., 5 Cal., 363) followed.

In the matter of the petition of Shrish Chunder Mookhopadhaya (I. L. R., 6 Cal., 161.)

Per Garth, C. J.,—Previously to the passing of Act XL of 1858, where a suit was brought by a minor on coming of age, to recover property sold by his guardian during his minority, it was generally incumbent upon the purchaser to prove that he acted, in good faith; that he made proper inquiries as to the necessity for the sale; and had honestly satisfied himself of the existence of that necessity. Now under s. 18 of that Act, the Civil Court not only has the power, but is bound, to inquire into the circumstances of each case and to determine whether, as a matter of law and prudence, it is right that any proposed sale or mortgage of the minor's property should take place; and if the Court, upon the materials and information brought before it by the guardian, makes an order for sale, a purchaser under such an order is not bound to make the same inquiry which the Judge has made, and to determine for himself whether the Judge has done his duty properly and come to a right conclusion.

Where a plaintiff alleges fraud or illegality as a ground for setting aside a sale made under s. 18, the onus lies upon him to make out a *prima facie* case of fraud or illegality, and to show that the debt which formed the consideration for the sale in such case, was one for which the minor was not responsible.

Sikhur Chund v. Dulputty Singh (L. L. R., 5 Cal., 363.)

A lease for a term of 12 years, but renewable at the *pergunnah* rate and transferable in its character, granted by a certificated guardian without the authority of the Court, is void *ab initio*, and will, therefore, not avail the lessee, even for the period of five years for which such guardian is at liberty to grant the lease.

Held, accordingly, that in the case of *ijmah* property, whether such a lease was executed by the guardian conjointly with the co-sharers of the minor, or separately, the minor was entitled to eject the lessee as trespasser in respect of his own share without making his co-sharers parties to the suit.

Quare whether such a lease granted by a certificated guardian conjointly with the co-sharers of a minor and thus creating one and the same tenancy, is not also void as against the co-sharers. *Held*, also, that a transfer made by a person in the capacity of a certificated guardian before the actual issue of the certificate, but after the orders for its issue have been made in his favor, and after his recognition as a certificated guardian, is a transfer within s. 18 of Act XL of 1858.

Herendra Narain Singh v. T. D. Moran (L. L. R., 15 Cal., 40.)

A putnidar obtained decrees for the enhancement of the rent of holdings in the possession of the widow of a deceased tenant, one decree being in respect of land formerly held by the latter, and the other in respect of a holding purchased by the widow, on behalf of her minor son by the deceased, whilst the enhancement suits were pending. The widow also signed Kabuliyats relating to both tenancies, agreeing, as mother of the minor to pay the enhanced rent.

Held, that as the putnidar was entitled to sue for enhancement, and it was not to be presumed that the mother held adversely to her son; also as she had come to what she believed to be and was, a proper arrangement, the son on his attaining full age, and entering into possession of the tenancies, was bound by the Kabuliyats.

Watson and Co. v. Sham Lal Mitter (I. L. R., 15 Cal., 8.)

S. 18 of the Bengal Minors Act (XL of 1858) does not imply that a sale or mortgage or a lease for more than five years, executed by a certificated guardian without the sanction of the Civil Court, is illegal and void *ab initio*; but the proviso means, that in the absence of such sanction, the certificated guardian who otherwise would have all the powers which the minor would have, if he were of age, shall be relegated to the position which he would occupy, if he had been granted no certificate at all. If any one chooses to take a mortgage or a lease for a term exceeding five years under these circumstances, the transaction is on the basis of no certificate having been granted.

* * * * *

Held, that even if mortgages executed by a certificated guardian without the sanction required by s. 18 of the Bengal Minors Act were void, the section did not make them illegal; and with reference to s. 65 of the Contract Act, the plaintiff could not obtain a decree for a declaration, that the mortgage was inoperative as against his share, except on condition of his making restitution to the extent of any monies advanced by the defendant under the mortgage deed which had gone to the benefit of the plaintiffs estate or had been expended on his maintenance, education, or marriage.

Girraj Bakhsh v. Kasi Hamid Ali (I. L. R., 9 All., 341.)

But see on this point the decisions of the Calcutta High Court (I. L. R., 15 Cal., 40) quoted above, and (I. L. R., 15 Cal., 627) and (11 C. L. R., 345,) quoted below.

The Allahabad High Court also held a different view from

the present in the case of *Chimman Sing v. Subran Kuar* (I. L. R., 2 All., 902.)

A sale of a minors immoveable property by a guardian appointed under Act XL of 1858, and who was also the *Kurta* of the joint family of which the minor was a member, is invalid if made without the sanction under s. 18, even though the sale may have been for the benefit of the minor and made in good faith to pay off the debts of the ancestor. Where, however, it was found that the purchaser had acted *bonafide* and had paid a fair price for the property, he was held entitled to a refund of so much of the purchase-money as had been expended for the benefit of the minor.

Shurrut Chatterjee v. Rajkissen Mookherjee (15 B. L. R., 350.)

Where a guardian, appointed under Act XL of 1858, mortgaged certain immoveable property of the minor without obtaining the sanction of the Court under s. 18 of that Act, and it appeared he was related to and jointly interested with the minor in the management of the property, *held*, that it was not a sufficient cause to recall the certificate, unless it was made clear that in the mortgage-transactions he had acted in good faith, or had injured or was likely, or had intended to injure the interests of the minor.

In the petition Busunto Coomar Ghose (15 B. L. R., 351, note.)

Where a guardian had mortgaged certain property of a minor without previously obtaining the sanction of the Court, under s. 18 of Act XL of 1858, but it was found that the mortgage-transaction was a proper one, and there had since been a decree in a suit in which the minor was properly represented under which the property had been sold, the irregularity as to the mortgage being made without the sanction of the Court was not allowed to prevail.

Alfotoonnissa v. Goluck Chunder Sen (15 B. L. R., 353, note.)

A lease granted by a guardian of minor's property who has obtained a certificate under Act XL of 1858, for a term exceeding five years without the sanction required by s. 18 of that Act is invalid.

Bhupendra Narayan Dutt v. Nemy Chund Mondol (I. L. R., 15 Cal., 627.)

A mortgage without the sanction of the Judge by a guardian of a minor appointed under Act XL of 1858, is absolutely void, and a decree obtained upon a mortgage so executed cannot be enforced against the property of the minor.

Buchraj Ram v. Ram Kissen Sing (11 C. L. R., 345.)

19. It shall be lawful for any relative or friend of a minor, at any time ^{Relative or friend may sue for account.} during the continuance of the minority, to sue for an account from any manager appointed under the Act, or from any person to whom a certificate shall have been granted under the provisions of this Act, or from any such manager or person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

As s. 19 Act XL of 1858 has provided a special procedure for impugning the accounts of a manager, *viz.*, by a regular suit by a relative or friend, a District Judge ought not, on the mere application of a friend, to call for and go into the accounts in a summary way under s. 21. (2 Hay 113.)

20. If the disqualification of a person for whose benefit a suit shall ^{Continuance of suit after disqualification cases.} have been instituted under this Act cease before the final decision thereof, it shall be lawful for such person to continue the prosecution of the suit on his own behalf.

21. The Civil Court for any sufficient ^{Revocation of certificate.} cause may recall any certificate granted under this Act, and may direct the Collector to take charge of the estate, or may grant a certificate to the Public Curator or any other person, as the case may be, and may compel the person whose certifi-

estate has been recalled to make over the property in his hands to his successor and to account to such successor for all monies received and disbursed by him.

The Court may also for any sufficient cause remove any guardian appointed by the Court.

Removal of guardian.
an.

So much of this section as provides that the Civil Court may direct the Collector to take charge of an estate has been locally repealed by Sec. 2 of Bengal Council Act IX of 1879.

Where an application is made under the provisions of s. 21, Act XL of 1858, to have a certificate granted under that Act recalled, and a fresh certificate granted to another, the applicant should set forth in his petition a sufficient cause for such course being taken, and the Court should thereupon proceed to enquire *judicially* whether such sufficient cause is established.

Sakhawat Ally v. Noorjehan Begum (I. L. R., 10 Cal., 429.)

Quære, whether the Judge of a District Court is competent to call upon a person to whom he grants a certificate, under Act XL of 1858 to furnish security; and whether, where he has done so, and security bonds have been given to him, he can assign them in the manner provided in s. 257 of the Succession Act 1865.

Amar Nath v. Thakur Das (I. L. R., 5 All., 248.)

The order of a Judge, rejecting an application for the removal of a guardian, under Act XL of 1858, is appealable.

In the matter of the petition of Mohendra Nath Mookherjee (7 B. L. R., Ap. 6.)

Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court, but under a will of the minor's grandfather.

Lakhi Priya Dasi v. Nobin Chundra Nag (3 B. L. R., A. C. 37.)

A certificate granted under s. 7 Act XL of 1858, can be recalled under s. 21. Where the application for recall is based on charges of waste and mismanagement, the certificate may be so recalled without any account having previously been taken in a regular suit under s. 19.

In the petition of Shurwar Khan (B. L. R., sup. vol., 720.)

It is not necessary to institute a regular civil suit in order to obtain the revocation of a certificate of guardianship. (3 N. W. P. H. C., 140.)

Where a case is started showing that the elder sons are neglecting their duty as managers of an estate to the material injury of a minor son, the Judge is bound to institute inquiry. (8 W. R., 278.)

Acts of waste on the part of a widow in regard to her husband's property, if proved, would be a ground for withdrawing a certificate granted to her, under Act XL of 1858. *Bhagwanee Koonwar v. Parbutty Koonwar*. (2 W. R., Mis. 13.)

A person apprehending danger to the health or life of a minor should ask the Court's interference under s. 21, Act XL of 1858. (2 W. R., Mis. 6.)

S. 21 refers to the procedure as between discharged guardians and their successors, and not to a case where the contest is between the owner of the estate and a discharged guardian. (4 W. R., Mis. 3.)

Selling the minors property, or allowing portions of it to be unnecessarily sold, justifies the recall of a certificate of guardianship.

Goonomonee Dassee v. Bhabasoondoree Dassee (18 W. R., 258.)

Where a guardian without any sufficient cause and justification withdrew an appeal made to set aside a sale of the estate of the minors, and at the same time dealt with the auction purchaser and obtained a putnee of a portion of that very property in the name of his own wife, his certificate of guardianship was cancelled.

Petamber Dey v. Ishan Chunder Dutt 18 W. R., 169.)

Where charges of immorality were brought against the holder of a certificate, under Act XL, it was held to be the duty of the Judge to enquire into the truth of the charges and the fitness of the certificate-holder.

Mohunuddy Begum v. Oomdutoohnissa (13 W. R., 454.)

Where an application is made for a certificate under Act XL of 1858, a party asserting certain rights adversely to the minor cannot be admitted as a party to the record, but must seek his remedy in a regular suit (9 W. R., 343.)

The accounts which a judge can call for under s. 21 are those which a discharged guardian is to furnish to his successor in office, and the only way in which a guardian re-

taining office can be made to furnish such accounts is by a regular suit brought by a relative or friend of the minor.

Ram Dyal v. Amrit Lall (9 W. R., 555.)^c

The law provides no limitation as to the time within which an application for certificate under Act XL of 1858 is to be made.

Poromasoondores v. Tarasoondores (9 W. R., 343.)

22. The Civil Court may impose a fine not exceeding five hundred rupees on any person who may wilfully neglect or refuse to deliver his accounts or any property in his hands, within the prescribed time, or a time fixed by the Court; and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court; and may also commit the recusant to close custody until he shall consent to deliver such accounts or property.

Penalty for neglect or refusal to deliver accounts or property.

23. The Civil Court may permit any person to whom a certificate shall have been granted under this Act not being the Public Curator, and any guardian appointed by the Court, to resign his trust; and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all monies received and disbursed by him, and making over the property in his hands.

Civil Court may permit registration of trust, &c.

24. The Public Curator and every other administrator to whom a certificate, shall have been granted under section 10, shall be entitled to receive

Remuneration of Public Curator, &c.

such commission not exceeding five per centum on the sums received and disbursed by him, or such other allowance, to be paid out of the minor's estate, as the Civil Court shall think fit.

25. Every guardian appointed by the Civil Court or by the Collector or under this Act, who shall have charge of any male minor, shall be bound to provide for his education in a suitable manner.

Guardians of minors to provide for education.

The general superintendence and control of the education of all such minors shall be vested in the Civil Court or in the Collector, as the case may be; and the provisions of Act XXVI of 1854 (*for making better provision for the education of male minors subject to the superintendence of the Court of Wards*) shall, so far as is consistent with the provisions herein contained, be applicable to the Civil Court or to the Collector, as the case may be, in respect to such minors, and to every such guardian.

Repealed by Bengal Act IV of 1870, s. 86 so far as it relates to any guardian appointed thereunder.

26. For the purposes of this Act, every person shall be held to be a minor who has not attained the age of eighteen years.

Persons under 18 years held minors.

The period of minority among Hindus, by the operation of Act XL of 1858, extends to eighteen years, as well within the original jurisdiction of the High Court, as within the

jurisdiction of the Civil Courts in the mofussil, and that whether the father is alive and of full age or not.

Joduth Mitter v. Bolyechand Dutt (7 B. L. R., 607.)

An application for a certificate under Act XL of 1858 (which if successful, would, in effect, prolong the minority of an infant from eighteen to twenty one), should not be granted when the alleged minor is admittedly on the point of attaining the age of eighteen, unless under particular circumstances, as where very great weakness of mind is proved, or where it is shown that there is some absolute necessity for making such order.

In the matter of the petition of Nazirun (I. L. R., 6 Cal., 19.) (6 C. L. R., 210.)

Effect of Acts by the minor :—

The Acts of a minor are only voidable not absolutely void. The purchasers of the right, title and interest of a judgment-debtor sued to obtain immediate possession of the property purchased at a sale held in execution of a decree, after setting aside an usufructuary mortgage executed by the judgment-debtor while a minor. *Held*, that until a transaction by a minor was avoided by some distinct act on attaining majority it must be considered valid.

Hari Ram v. Jitan Ram (3 B. L. R., A. C. 426.)

The plaintiff sold certain property to the defendant, and now sued to recover back the property, alleging that at the time he sold it he was a minor, and that consequently the contract was a void contract. It appeared that, though the plaintiff was a minor at the time of the sale, he was then within a few months of his majority, and that, since that time, so long a period had elapsed that the present suit only escapes being barred by a single month. In other words, the plaintiff, for eleven years after he became a major, stood by, and allowed the defendants quietly to enjoy possession of the land. *Held*, that the plaintiff was not entitled to succeed in the suit in consequence of his silence for eleven years, which had not been explained in any manner whatever, and which may therefore be taken as a sufficient ratification of the sale.

Baidonath Dey v. Ram Kishore Dey (10 B. L. R., 326, note.)

A conveyance by a minor is so far imperfect that it may be avoided by the minor when he comes of age. But, unless after coming of age, he promptly does some act to repudiate the contract, it must be taken against him that he ratifies it.

Doorga Churn Shaha v. Ram Naryan Dass (10 B. L. R., 327, note.)*

27. Nothing in this Act shall authorize the appointment of a Guardian of the person of a female whose husband is not a minor, or the appointment of a guardian of the person of any minor whose father is living and is not a minor; and nothing in this Act shall authorize the appointment of any person other than a female as the guardian of the person of a female.

If a guardian of the person of a minor be appointed during the minority of the father or husband of the minor, the guardianship shall cease as soon as the father or husband (as the case may be) shall attain the age of majority.

A Mohamedan father of the Shia sect is entitled to the custody of a daughter, above the age of 7 years as against the mother. The decision in *Fuseehun v. Kajo* (I. L. R., 10 Cal., 15,) has no application to a case where the father is seeking to get custody of his daughter.

Lardli Begum v. Mahomed Amir Khan (I. L. R., 14 Cal., 615.)

28. All orders passed by the Civil or by any subordinate Court under this Act shall be open to appeal under the rules in force for appeals, in miscellaneous cases, from the orders of such Court and the subordinate Courts.

Any person who, being a party to proceedings taken under Act XL of 1858, is injuriously affected by an order passed thereon, is, under s. 28 of that Act, entitled to an appeal.

In the matter of the petition of Nazirun (I. L. R., 6 Cal., 19.)

Where a Judge cancels his own order and appoints the Collector to take charge of a minor's estate, a friend of the minor may on his behalf appeal under s. 28. (13 W. R., 256.)

Only persons claiming a right to have charge of property in trust for a minor have a right to make applications under Act XL of 1858, and they only can appeal under s. 28. A mere creditor has no *locus standi*.

Mstoon Bibee v. Gibbon (12 W. R., 101.)

The appeal given by s. 28 of Act XL of 1858, is subject to the ordinary law of appeal laid down in the Burmah Courts Act.

No appeal, therefore, will lie from an order refusing an application for the issue of a certificate of administration under Act XL of 1858, it being impossible to place any specific money valuation on such an application.

In re Mulla Adjim (L. L. R., 14 Cal., 351.)

29. The expression "Civil Court" as used in this Act shall be held to mean the principal Court of original jurisdiction in the district, and shall not include the Supreme Court; and nothing contained in this Act shall be held to affect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction.

Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

The Court of the Judicial Commissioner of Assam is a Civil Court contemplated by s. 29, Act XL of 1858.

Kaleeka Pershad Bhattacharjee v. Dukhina Kalee Dabes (W. R., 1864, Mis. 34.)

CURATORS

IN

CASES OF SUCCESSIONS.

ACT NO. XIX OF 1841. *

PASSED ON THE 6TH OF SEPTEMBER 1841.

An Act for the protection of movable and immovable property against wrongful possession in cases of successions.

1. Whereas much inconvenience has been experienced
Preamble where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession; and whereas, from the above causes the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit; and whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards moveable property; and

* Extended to Madras and Bombay by Act VIII of 1842.

whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste, or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case; and whereas it will be very convenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit:—

It is hereby enacted that, whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

2. It shall be lawful for any agent, relative, or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents, at his discretion whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the

ordinary remedy of a regular suit, and that the application is made *bona fide*.

4. In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned), and shall deliver possession accordingly—provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal effects. or otherwise secure the same upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

5. In case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

6. The Judge shall have power to authorize such Powers conferrable on curator. curator, either to take possession of the property generally, or until security be given by the party in possession, or until inventories

of the property shall have been made, or for any other

Discretion to allow purpose necessary for securing the party in possession property from misappropriation or to continue. waste by the party in possession. Pro-

vided always that it shall be entirely discretionary with the Judge whether he shall allow the party in possession to continue in such possession on giving security, or not; and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

7. The Judge shall exact from the curator security for the faithful discharge of his trust, Curator to give security, and may and for rendering satisfactory accounts receive remuneration. of the same as hereinafter mentioned, and may authorize him to receive out

of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the per-

Disposal of sur-sonal property and on the annual profits plus. of the real property. All surplus

moneys realized by the curator shall be paid into Court, and invested in public securities for the benefit of the per-

Curator may be in-sons entitled thereto upon adjudication vested with powers of the summary suit. Provided always before security is that, although security shall be required taken. from the curator with all reasonable

despatch, and where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

8. Where the estate of the deceased person shall Report from Col- consist wholly or in part of land paying lector where estate revenue to Government in all matters includes revenue. regarding the property of citing the paying land. party in possession, of appointing a

curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he shall not be obliged

to act in conformity thereto, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwání Adálat, and the Court of Sadr Diwání Adálat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. The curator shall be subject to all orders of the Institution and Judge regarding the institution or the defence of suits. Authority for collection of dues may be instituted or defended in the name of the curator on behalf of the estate. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

10. Pending the custody of the property by the Allowances to curator, it shall be lawful for the apparent owners Judge to make such allowances to parties having a *prima facie* right there-to as, upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require, taking, at his discretion, security for the payment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. The curator shall file monthly accounts in abstract, Accounts to be and at the period of every three months, filed by curator. if his administration last so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

12. The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be of interested party competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by

such curator. And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

13. After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district within the same presidency from appointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the

Curators of different appointment be only in respect of a part of property. portion of the property of the deceased, this shall not preclude the appointment within the same presidency of another curator in respect of the residue or any portion thereof; provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before

Power to appoint another Judge; and provided further sole curator. that, if two or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sadr Diwāni Adālat to make such order as it shall think fit for the appointment of one curator of the whole property.

14. This Act shall not be put in force unless the Limitation of time for application for application made within six months of the decease of the proprietor, whose property is claimed by right in succession.

15. This Act shall not be put in force to contravene any public act of settlement; neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but, in every such case, so soon as the

Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

16. This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any presidency; and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

17. Nothing in this Act contained shall be any saving of right to impediment to the bringing of a regular suit. regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

18. The decision of the Judge upon the summary suit under this Act shall have no effect other than that of settling the actual possession; but for this purpose, it shall be final, not subject to any appeal or order of review.

19. It shall be lawful for the Governments of the Appointment of respective presidencies to appoint public curators. public curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provisions of this Act

20. Repealed by Act VIII of 1855.

APPENDIX.

ACT XIX OF 1841.

1. [*Forms for use on the appointment of Curators—C. O. No. 186 of 11th February 1842.*]
The subjoined forms are prescribed for use on the appointment of Curators in cases under Act XIX, 1841:—

(a) FORM OF ENGAGEMENT OF CURATOR.

I, A. B., having been appointed by the Judge of district—, under the provisions of Act XIX of 1841, to take temporary possession of the property of the late C. D., do hereby solemnly promise and engage diligently and faithfully to discharge the trust committed to me, and to act in every respect according to the instructions given me and to the best of my judgment for the interest of the proprietors. I also promise to obey all orders of the judge, regarding the institution or the defence of suits concerning or connected with the property committed to my charge. I further promise and engage to give acquittances for all sums of money collected by me, or debts or rents on account of the estate of the said C. D., and to render a true and just account for whatever may be received by me on account of the said estate, filing at the earliest practicable period an Inventory of the property received by me; and also monthly in the judge's office accounts in abstract; and at the end of every three months; and on giving up possession of the property accounts in detail of my administration of the said property. I further promise and engage to adhere strictly to such laws as may be passed for the guidance of Curators by the Governor General in Council, and to such orders as I may receive from the Judge, and to derive no personal advantage whatever, directly or indirectly, from the trust committed to me, beyond the allowance granted to me as stated in my *sunnud* of appointment.

A. B.

(b) FORM OF SECURITY BOND.

Whereas A. B. has been appointed by the Judge of district— under the provisions of Act XIX of 1841, to take possession of the property of C. D., deceased: I, E. F., do hereby engage and bind myself to stand security, and to be answerable for the faithful discharge of his trust by the said A. B., agreeably to the terms of his *sunnud* of appointment, a copy of which has been duly delivered to me. I also bind myself, my heirs and successors, not to sell, give, or otherwise transfer or dispose of the property mentioned in the annexed Schedule, which I hereby pledge for the purposes of this engagement, until the conditions thereof have been completely fulfilled.

E. F.

Schedule of property.

(To follow here)

(c) FORM OF SUNNUD.

Sunnud to A. B

Whereas you, A. B., have been appointed, under the provisions of Act XIX of 1841, to take temporary possession of the property of the late C. D., you shall diligently and faithfully discharge the trust committed to you, and act in every respect according to the instructions given you and to the best of your Judgment for the interest of the proprietors; you shall obey all orders of the Judge regarding the institution or the defence of suits concerning or connected with the property committed to your charge. You shall further receive payments of debts and rents due to the estate of the said C. D., until otherwise ordered; such power of collecting debts, however, to cease on the granting of a certificate, or of Probate or Letters of Administration to the estate of the said C. D.; and you shall give acquittances for all sums of money collected by you as debts or rents on account of the estate of the said C. D., and you shall render a true and just account of whatever may be received by you on account of the said estate, filing, at as early a period as practicable, an Inventory of the property received by you; and also monthly in the Judge's office accounts in abstract; and at the end of every three months, and on giving up possession of the property, accounts in detail of your administration of the said property. You shall further adhere strictly to such laws as may be passed for the guidance of Curators by the Governor General in Council, and to such orders as you may receive from the Judge; and you shall derive no personal advantage whatever, directly or indirectly, from the trust committed to you, beyond the allowance hereby granted to you of five per centum on the personal property and on the annual profits of the real property placed under your charge; and you shall exercise the power of Curator under this *sunnud* until determination of the summary suit now pending respecting the right to possession of the said property, or until otherwise ordered by this Court.

Schedule of Property placed under the Curator.

(To follow here)

ACT XL OF 1858.

2 (a) [Section 3, Act XL of 1858—Form of application for Certificate—C. O. No. 2 of 28th January 1876.]—Every application for a certificate under Act XL of 1858 shall be in the following form, with such variations as the circumstances of each case may require, and the certificate shall in every case show the date on which it will cease to have effect:—

IN THE CIVIL COURT OF THE DISTRICT OF
TO

His Honor

District Judge of _____,

Dated _____ the _____ of 18 .

The humble petition of _____,

son of _____,

resident of _____,

district _____,

SHEWETH,

That A. B., son of C. D., resident of _____ district _____, is entitled to the property specified in the Schedule hereunto annexed and marked A (or to a one-fourth share thereof, or as the case may be), as the son and heir (or as one of the four sons, or as the case may be) of E. F., deceased (or as a legatee under the will of E. F., deceased, or under a deed dated _____ and made by E. F., or state how otherwise).

That the value of the said property (or of the said A. B's share therein) is correctly set forth in the said Schedule A.

That the said A. B. is a minor, being of the age of _____ years months and _____ days.

That your petitioner is (state the degree of relationship to, or connection with, the minor, or how otherwise the petitioner claims to be entitled to have charge of the minor's property).

That the other nearest relatives of the minor are (state their names and the degrees of relationship to, or connection with the minor).

That your petitioner as such next of kin (or state how otherwise) claims to have charge of the said property in trust for the said A. B. during his minority.

That your petitioner therefore prays that a certificate of administration under section 3 of Act XL of 1858 may be granted to him.

And your petitioner, as in duty bound, &c.

I, the petitioner named in the above petition, do solemnly affirmed that what is stated therein is true to the best of my information and belief.

(Signature of petitioner.)

Solemnly affirm this day of , 18____.
before me.

District Judge

Rule No. 3, dated the 12th March 1889.

In the form of application for certificate under Section 3, Act XL of 1858, prescribed by Rule 2 (a), Chapter IV, at pages 207-8, Civil Rules and Orders, after the clause "That your petitioner is" &c., insert the following clause:—

That the other nearest relatives of the minor are (state their names, and the degrees of relationship to, or connection with, the minor).

(b) [Sections 7, 10 and 11, Act XL of 1858—Forms of Certificate—C. O. No. 150 of 31st August 1859]—The subjoined forms of certificate are prescribed for use in cases under Act XL of 1858:—

(A.)

FORM OF CERTIFICATE UNDER SECTION 7, ACT XL OF 1858.

Whereas this Court has, under the provisions of section 7 Act XL of 1858, been pleased to appoint you, A. B., to administer to the estate of C. D., at present a minor, during the period of his minority, subject to the power of revocation vested in the Court by section 21 of the Act aforesaid, you are hereby authorized to take charge of the property of the minor in trust to collect and pay all just debts, claims, and liabilities due to or by the estate of the minor, to institute or defend suits connected with that estate, and generally to do and perform all acts which may be necessary to the due discharge of the trust vested in you provided always that you shall not sell or mortgage any part of the estate belonging to the minor, and that you shall not grant

any lease for a term exceeding five years without the express sanction of this Court previously obtained; and that you shall keep regular accounts of your receipts and disbursements, with all vouchers and other documents necessary to establish their correctness. (If the person administering is himself appointed guardian, then it should be "you are hereby further appointed guardian of the minor's person, and authorized to expend Rs. monthly on account of his maintenance and education.")

(B.)

FORM OF CERTIFICATE UNDER SECTION 10, ACT XL OF 1858.

Whereas this Court has, under the provisions of section 10 Act XL of 1858, appointed you, A. B., to be Public Curator (or Administrator) of the personal estate, including houses, gardens and the like, belonging to C. D., a minor, and to continue to administer to such estate during his minority at a salary of Rs. , or commission at per cent. on all sums received and, disbursed by you on account of the minor, subject to the power of revocation vested in the Court, you are hereby authorized to take charge of the aforesaid minor's property, to institute and defend all actions in connection with the property, and to do and perform all acts necessary to the due discharge of the trust vested in you; you are to deliver into this Court, within six months from this date, an Inventory of the immoveable property belonging to the said C. D., and of all such sums of money, goods, and effects as you may have received on account of his moveable estate, together with a statement of all debts ascertained or believed to be due to the said estate.

You are, within three months after close of the current year and of every succeeding year that you shall retain charge of the property of C. D., and also within three months of the termination of your trust, to furnish to this Court an accurate account of the property in your charge, and the sums received and disbursed on account thereof, and the balance in hand, together with the vouchers and other documents necessary to support the account. You are to exercise the same powers in regard to the management of the said property as might be exercised by the proprietor, were he not a minor, and to collect and pay all just debts on account thereof. But you are not to sell or mortgage any part of the immoveable property, nor to grant any lease thereof for a term exceeding five years, without the express orders of this Court previously obtained. You are hereby further authorized to pay Rs. monthly on account of the minor's education and maintenance to X. Y. Z., appointed his (or her) guardian under the orders of this Court dated

(C.)

FORM OF CERTIFICATE UNDER SECTION 7 OR SECTION 11, ACT XL OF 1858

Whereas, 'under section 7 (or section 11), Act XL of 1858, you have been appointed to be guardian of O. D., now a minor, during the period of his minority, or until this Certificate be revoked, you are hereby required to take charge of the person of the said minor, and to provide suitably for his maintenance and education, for which purpose you will receive from the Public Curator (or Administrator of the estate) a monthly sum of Rs. , and you are hereby authorized to receive a personal allowance of Rs per mensem as a remuneration for your trouble and responsibility.

(c) [*Accounts to be furnished by persons holding certificates under Section 10—Court-fees—C. Os. No. 25 of 15th September 1865, and No. 19 of 16th May 1866.*]*—All persons holding certificates of administration under section 10 of Act XL of 1858 are required to furnish regularly the accounts required by section 16. If they fail to do so, they should be dealt with under sections 21 and 22 of the Act. The provisions of section 17 of the Act should also be most carefully attended to, and those of Art. 12, Schedule I of Act VII of 1870 must be strictly enforced, so that Government may not be defrauded of its stamp revenue.*

(d) [*Persons holding certificates under section 7 not bound to file annual accounts, but such persons should keep accounts, &c.*]*—When a certificate of administration is granted under Act XL of 1858 to any person entitled to have charge of the property of a minor by virtue of a will or deed, or to any relative (section 7), such relative or other person is not required to file annual accounts under section 16, inasmuch as that section applies only to the Public Curator and other administrators to whom a certificate may have been granted under section 10. But under section 21 the Civil Court for any sufficient cause may recall any certificate granted under the Act, and may then*

compel the person whose certificate has been recalled to make over the property in his hands to his successor (to whom the Court has the power of granting a fresh certificate), and to account to such successor for all moneys received and disbursed by him, and on the neglect or refusal of such person to deliver his accounts and the property in his hands, the Court may under section 22 impose on him a fine not exceeding Rs. 500, realizable by attachment and sale of his property, and may commit the recusant to close custody until he shall consent to deliver such account or such property. Thus the Court has power, though not identical in both cases, over administrators under section 7, well as over those under Section 10.—(e) Thus, although administrators under Act XL of 1858, other than Public Curators and others appointed under section 10 cannot be required to *furnish* accounts annually, yet they are bound to *keep* regular accounts, and they may be sued (section 19) and compelled to produce them. Attention is, therefore, drawn to the duty rightly enjoined upon them in the certificate for which form (A) (above) has been provided. District Judges should omit no opportunity of reminding such persons of the duty of keeping accounts and of exercising a proper economy in carrying out their trusts.

THE
MINORS' AMENDMENT ACT.

NO. IX OF 1861.*

RECEIVED THE GOVERNOR-GENERAL'S ASSENT
ON THE 24th APRIL, 1861.

An Act to amend the law relating to Minors.

WHEREAS it is expedient to amend the law
Preamble. for hearing suits relative to the
custody and guardianship of minors; it is enacted
as follows:—

1. Any relative or friend of a minor who
Application. may desire to prefer any claim
in respect of the custody or guardianship of
such minor may make an application by petition,
either in person or by a constituted agent,
to the principal Civil Court of original jurisdiction
in the district by which such application if preferred
in the form of a regular suit, would be cognizable,
and shall set forth the grounds of his application
in the petition.

The Court, if satisfied by an examination
Notice of application. of the petitioner or his agent,
if he appear by agent, that there is ground for
proceeding, shall give notice of the application to the person

* Declared to apply to the whole of British India except the Scheduled Districts, by Act No XV of 1874. As to European British Minors, see Act No. XIII of 1874.

50 MINORS' AMENDMENT ACT, IX OF 1861.

named in the petition as having the custody or being in the possession of the person of such minor, as well as to any other person to whom the Court may think it proper that such notice should be given, and shall fix as early a day as may be convenient for the hearing of the petition and the determination of the right to the custody or guardianship of such minor.

Appellant having presented a petition to a Zillah Judge under Act IX of 1861, claiming the possession and custody of his two minor children alleged to be detained by their mother, the parties being European British subjects,—*Held* that such Judge had no power to entertain the application.

In the petition of *Shannon* (2 N. W., 79.)

Act IX of 1861 applied to Pegu, and also to minors the lawful children of European Natural-born British subjects.

In re Hutton (3 W. R., Ref. 5.)

In Act IX of 1861 "the principal Civil Court of original jurisdiction in the district" means the principal Court of ordinary original civil jurisdiction.

Ram Bunssee Koomaree v. Soobh Koomaree (7 W. R., 321.)

Act IX of 1861 does not debar a District Munsif's Court from entertaining a suit by a Hindu father to recover possession of his minor son alleged to be illegally detained by the defendant.

Krishna v. Reade (I. L. R., 9 Mad., 31.)

An application was made to a Munsif for the custody of a minor daughter, which on appeal to the Civil Judge was dismissed. On appeal to the High Court, *held* that all the proceedings must be quashed. The application should have been made in the principal Civil Court of original jurisdiction in the district.

Harasundari Boistabi v. Jaydurga (4 B. L. R., Ap. 36.)

Minor wife :—

Where a person claims the custody of a female minor on the ground that she is his wife, and such minor denies that she is so, Act IX of 1861 does not apply. Such person should establish his claim by a suit in the Civil Court.

Balmakund v. Janki (I. L. R., 3 All., 403.)

P whose minor wife had refused to return to cohabitation with him on the ground that he was out of caste in

consequence of having committed a criminal offence, applied to the District Court under Act IX of 1861 for the custody of her person. *Held* that, that Act did not apply to such a case.

Phakandu v. Manki (I. L. R., 3 All., 506.)

The paternal uncle of a female Hindu minor, whose father was dead, applied to the District Judge, under Act IX of 1861, for the custody of the minor, and for an injunction to prevent the mother of the minor from carrying out a projected marriage. On the 8th March 1881, the Judge issued an *ad interim* injunction. When the application came on for hearing, it appeared that the marriage had taken place before the order for injunction had reached the parties. The District Judge found that the mother was entitled to the custody of the minor, yet the petitioner was entitled to give the minor in marriage in preference to the mother. The District Judge also found that the marriage had not in fact been validly performed. On appeal to the High Court, it was contended that the District Judge had no jurisdiction to determine the right of any party to give an infant in marriage on an application made under Act IX of 1861, or to grant an injunction; and it was also contended that the Magistrate was wrong in entering into the question of the factum of the marriage. *Held* that, under the provisions of Act IX of 1861, the District Judge had jurisdiction.

Held also, that for the purpose of deciding whether the injunction should issue, the Judge was justified in entering into the question of the factum of marriage, though his finding on that point would have no effect in determining its validity.

Brohmomoyee v. Kashi Chunder Sen (I. L. R., 8 Cal., 266 ; 10 C. L. R., 91.)

2. The Court may direct that the person

Production, and temporary custody and protection, of minor. having the custody or being in possession of the person of such Minor shall produce him or her in Court or in any other place appointed by the Court on the day fixed for the hearing of the petition or at any other time, and may make such order for the temporary custody and protection of such Minor as may appear proper.

3. On the day appointed for the hearing of the petition, or as soon after as may be practicable, the Court shall hear the statements of the parties or their agents if they appear by agents, and such evidence as they or their agents may adduce, and thereupon shall proceed to make such order as it shall think fit in respect to the custody or guardianship of such Minor and the costs of the case.

Court, after hearing statements of parties, &c., to make order as to custody or guardianship.

The Muhammadan Law takes a more liberal view of the mother's rights with regard to the custody of her children than does the English law, under which the father's title to the custody of his children subsists from the moment of their birth, while, under the Muhammadan law, a mother's title to such custody remains till the children attain the age of seven years.

Idu v. Amiran (I. L. R., 8 All., 322.)

Under the Muhammadan Law, the grand-mother is entitled to the guardianship of a minor female child, in preference to the child's paternal uncle, where such child although married to a minor, has not attained puberty.

Bhoocha v. Elahi Bux (I. L. R., 11 Cal., 574.)

A Muhammadan father of the Shia sect is entitled to the custody of a daughter above the age of 7 years as against the mother. The decision in *Fuseehun v. Kajo* (I. L. R., 10 Cal., 15.) Has no application to a case where the father is seeking to get the custody of his daughter.

Lardli Begum v. Mahomed Amir Khan (I. L. R., 15 Cal., 615.)

The effect of S. 21 of Regulation X of 1793 and of S. 27 Act XL of 1858 is, that no person other than a female shall in any case be entrusted with the guardianship of a female minor.

Held therefore, where a Muhammadan mother had by marrying a stranger forfeited her right to the guardianship of her children, that in the case of her female children their grand-mother was entitled to be appointed guardian to the exclusion of male relatives. And the fact that the proceeding in which the right is sought to be established is under Act IX of 1861 does not affect the rule.

Fuseehun v. Kajo (I. L. R., 10 Cal., 15.)