

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Asharfi Lal v. the Deputy-Commissioner of Bara Banki, as Manager of Court of Wards under Act XXXV. of 1858 of the Estate of Ehsan Husain Khan, from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered 6th February 1895.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

THE Judgment appealed from appears to turn upon a pure technicality. The Appellant had lent money to Ehsan Husain Khan on the security of certain bonds. Ehsan Husain subsequently became a lunatic, and was so declared by an order of Court of the 17th November 1885, and his estate was declared to be under the Court of Wards, and was placed under the charge of the Deputy-Commissioner of Bara Banki. In other words, it became subject to the administration of the Court of Wards, and the Court of Wards appointed a manager. The Appellant brought a suit in 1888 against the Deputy-Commissioner for the recovery of the money lent. The claim was partially decreed by the Sub-Judge of Bara Banki, and that decree was affirmed on appeal by the District Judge of Lucknow. No further appeal was, as of right, open to the Defendant, but he applied to the Judicial Commissioner to revise

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the case under the terms of Section 622 of the Civil Procedure Code of 1882, on various grounds set forth in his application. All the objections taken were overruled by the Judicial Commissioner, and are not now insisted upon. But the Judicial Commissioner took a new objection of his own, and held that the first Court had no jurisdiction to try the case. He said:—"The Court of First Instance had no jurisdiction to try this case against the Court of Wards, because a manager, Ghazaffar Ali Khan, having been appointed by the Collector, either in his general capacity or as Court of Wards, he was the proper person to be so sued on behalf of the lunatic. *Vide* Sections 11 and 14, Act XXXV. 1858. Or else the guardian of the lunatic's person, who was his mother, ought to have been so sued."

There seems to have been some confusion in the mind of the learned Judge between a "manager" and a "guardian." The Oudh Land Revenue Act (Act XVII. of 1876), relied upon by him, enacts (Sections 175 and 176):—"All disqualified proprietors whose property is in charge of the Court of Wards shall sue and be sued by and in the name of their guardians, where guardians have been appointed: provided that no such suit shall be maintained or defended by any guardian without the sanction of the Court of Wards. If no such guardian has been appointed, the disqualified proprietors shall sue and be sued by and in the name of the Court of Wards." There is nothing said about a manager.

The learned Judge puts the objection in the alternative by saying:—"Or else the guardian of the lunatic's person, who was his mother, ought to have been so sued." But there was no evidence at all of the mother being the

guardian of the lunatic's person. Their Lordships are now told by Mr. Branson, on behalf of the Defendant, that in fact the wife of the lunatic—not the mother as the learned Judge supposed—was appointed guardian. But this fact has never been put upon the record, and cannot therefore be accepted here. But even supposing that the wife was appointed guardian, and that she was guardian at the time the decree of the first Court was made, still the fact remains that the Appellant had made party to the suit the Court of Wards, the authority which had the property of the lunatic under its control, and which would have to answer a decree if a decree were made. Even if the guardian were a party it would not be the guardian who would have to satisfy the decree; the guardian would have to go to the Court of Wards and get the funds to pay with. It is not suggested that the suit was not fully tried out upon the merits, or that any other line of defence could have been raised if the guardian had been party to the suit. The ground therefore on which the Judicial Commissioner reversed the decrees of the Lower Courts seems to have been of the very flimsiest character, even if it had good technical grounds to go upon, which it had not. Their Lordships will therefore recommend Her Majesty to reverse the Judicial Commissioner's decree, and to restore the decrees of the District Judge. The Respondent must pay the costs of the application to the Judicial Commissioner to revise the case, and the costs of this appeal.

