

(1886) 07 CAL CK 0010

Calcutta High Court

Case No: None

Lala Kedar Nath

APPELLANT

Vs

Nowbat Roy and
Others

RESPONDENT

Date of Decision: July 9, 1886

Citation: (1886) ILR (Cal) 219

Hon'ble Judges: Wilson, J; Porter, J

Bench: Division Bench

Judgement

Wilson and Porter, JJ.

The only point before us in this appeal is as to the date on which the plaintiff is to be taken to have attained his majority, whether on the completion of his eighteenth or on the completion of his twenty-first year. If a guardian was duly appointed according to law, then under the Majority Act he would not attain his majority until the completion of his twenty-first year. If such appointment of a guardian was not duly made, he would attain his majority on the completion of his eighteenth year.

2. The fact is, as found, that an application was made for a certificate of guardianship, and an order was passed for the issue of a certificate, but that order was apparently abandoned, and no certificate was ever obtained.

3. It appears to us that under the Minors' Act it is the certificate which creates the relation of guardian and ward, and that the actual obtaining of the certificate is what is meant by the appointment of a guardian referred to in the Majority Act.

4. In the case of Stephen v. Stephen ILR Cal. 901 it was held by Sir Richard Garth and Mr. Justice Cunningham, confirming a judgment of the Original Side of this Court, that a certificate of guardianship takes effect not from the date of the order granting it, but from the time the certificate is actually issued. On the other hand, in the case of Chune Mul Johurry v. Brojo Nath Roy Chowdhry ILR Cal. 967 a different view was taken by Field and Macpherson, JJ., who held that the making of the order

for, and not the taking out of the certificate, is that by which a guardian is appointed. On a latter occasion the matter came again before another Bench of this Court in the case of Sahai Nand v. Mungniram Marwari ILR Cal. 542 and Tottenham and Norris, JJ." who decided that case, followed the view taken by Garth, C.J., and Cunningham, J., already noticed.

5. It appears to us therefore that there is a distinct preponderance of authority in this Court in favour of the view that a certificate of guardianship takes effect from the time it is Issued-a view, which, in our opinion, is in accordance with the true construction of the statutes themselves.

6. The result is that the order of remand by the District Judge must be set aside, and that the decree of the first Court must stand.

7. The appellant will have his costs in this and the lower Appellate Court.