

(1869) 04 CAL CK 0029

Calcutta High Court**Case No:** Miscellaneous Regular Appeal No. 86 of 1869

Srimati Lakhi Prya Dasi

APPELLANT

Vs

Nobin Chandra Nag

RESPONDENT

Date of Decision: April 15, 1869

Judgement

L.S. Jackson, J.

This is an appeal against an order of the Zilla Judge, refusing to grant the petitioner certificate of guardianship under Act XL of 1858. The Judge calls it an application for the removal of Nobin Chandra Nag from the guardianship of the boy, Pran Govind Nag, and it appears very likely that this was the form that the application took before the Judge. He says that the guardian was appointed, as such, by the grandfather of the boy, who made a will, dividing his property between the boy and his uncle, the present guardian. The present guardian, it seems, has DOC taken out a certificate, and is not appointed by the Court. That being so, it does not appear that the Judge had, under Act XL of 1858, power summarily to remove such guardian, section 21 only enabling the Civil Court for any sufficient cause to recall a certificate granted under the Act, and also to remove any guardian appointed by the Court. The Judge, therefore, could not summarily remove the guardian, and the guardianship not being vacant, the Judge was not empowered to grant a certificate to the widow, who is the applicant. I observe, however, that the petition presented to the Judge set forth that the opposite party, the minor's uncle and guardian had ill-treated the minor, and had expelled him and his mother, the petitioner, from the family-house, and had deprived them of the minor's share of the property. This was, no doubt, a good cause for commencing a suit against the guardian, and, under such circumstances, I think it very likely that the Court, in which the suit was commenced, would, under the discretion allowed u/s 3 of the Act, permit a suit to be instituted without a certificate of administration.

2. We have been asked to give the petitioner costs out of the estate. But the Court is not administering the estate, and we are not aware what the estate is, out of which the costs are to be given.

3. I think the application should not be granted, and that she ought not to have her expenses out of the estate.

Markby, J.

4. I am of the same opinion.

Jackson, J.

The decision will be affirmed with costs.