

In Re: Bittan (an Infant)

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Court : Kolkata

Decided On : May-02-1877

Reported in : (1877)ILR2Cal357

Judge : Macpherson, J.

Appellant : In Re: Bittan (an Infant)

Judgement :

Macpherson, J.

1. There being no suit, has the Court power to make such an order? It is submitted it has. The power which the Court has under the Charter of 1865, Section 16, is the power which the Supreme Court had. That Court had the power of the Court of Chancery in such matters; see Simpson on Infants 223; Daniell's Chancery practice, 1189 and 1190. It appears from these authorities that the Court of Chancery has power to appoint a guardian on petition without suit. The rules of the Supreme Court on the matter refer to petitions generally without any reference to any suit; see Smollett and Ryan's Equity Rules, 170, [Macpherson, J.-The question is what was the practice of the Supreme Court at the time the High Court was instituted.] see matter of Ann Butler (Morton's Dec., 262), and Ex parte Lokecaunt Mullick (Morley's Dig., Vol II, 42).

2. The Court mentions that the order should be to refer if to the Judge in Chambers to enquire whether the petitioners, or any other person to be named,

are proper to be guardians of the child; and that the petitioners do hand over the property in their hands to the court receiver, who is appointed the Receiver in this matter, with liberty to the receiver to sell the property and invest the proceeds in Company's paper. Costs to come out of the estate.

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