

**C.N. Stephen Vs. G. Stephen**

**C.N. Stephen Vs. G. Stephen**

**SooperKanoon Citation :** [sooperkanoon.com/860932](http://sooperkanoon.com/860932)

**Court :** Kolkata

**Decided On :** Mar-03-1883

**Reported in :** (1883)ILR9Cal901

**Judge :** Richard Garth, C.J. and ;Cunningham, J.

**Appellant :** C.N. Stephen

**Respondent :** G. Stephen

**Judgement :**

Richard Garth, C.J.

1. The defendant No. 3 is the sole appellant in this case, and the only ground of appeal is, that at the time when the promissory note was given, he, the defendant No. 3, was a minor.

2. The facts were these: The defendant No. 1 is the father of the defendant No. 3, and it appears that in September 1877, before the defendant No. 3 had attained the age of 18 years, the defendant No. 1 petitioned the District Judge of Dacca for a certificate of administration (under Section 3 of the Minor's Act XL of 1858) to the property of the defendant No. 3.

3. On the 10th of December 1879 the Judge made an order for a certificate of administration under that Act, and on the 10th December 1881 the certificate was issued.

4. But meanwhile, between September 1877 and the 10th of December 1879, when the Judge made the order, the defendant No. 3 had attained the age of 18 years; and the note in question was given on the 27th of October 1880, before the certificate was issued.

5. In this state of things the learned Judge in the Court below has held that the defendant No. 3 could not avail himself of the defence of minority; and I think he was right.

6. Section 3 of Act XL of 1858 enables any person who claims a right to have charge of the property of a minor under a will or deed to apply to the Civil Court for a certificate of administration. Section XI provides that, 'whenever a Court shall grant a certificate of administration to the estate of a minor, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor;' and Section 18 further provides that '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.'

7. Then by Section 3 of the Indian Majority Act IX of 1875, it is enacted that 'every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice shall be deemed to have attained his majority when he shall have completed his age of 21 years and not before.'

8. The question is, whether by the combined operation of the provisions of these two Acts, the defendant No. 3, at the time when he signed the note in question, was under the disability of minority.

9. In my opinion he was not.

10. In the first place I think that until the certificate has been actually issued the estate of the minor does not vest in the person who obtains the certificate, and if after the time when the minor comes of age, that is to say, attains the age of 18 years, and before the certificate is granted he enters into any contract, I consider that he is bound by such contract whether the certificate had been previously

applied for or not.

11. If this were not so, it seems to me that persons dealing with the minor after he had attained his full age would be placed in a most unfair position.

12. Suppose a certificate to be applied for on the 1st of January 1880, and that before the application is heard, say on the 1st February following, the minor attains his full age of 18. He enters upon the possession and management of his property, sells portions of it to bond fide purchasers, mortgages other portions, and has various dealings with various people who know perfectly well that he is of age, and have every reason to believe that they are at liberty to contract with him.

13. For some reason or other the application is not heard or the certificate granted (as in this case) for a year afterwards. Are all the minor's sales and other dealings to be avoided at his option or that of his guardian? It seems to me, that if that were the law, it would give rise to much injustice, and might frequently be made an instrument of fraud.

14. When a minor comes of age, and is entitled by law to take possession of and manage his property, the public have a right to deal and contract with him, and I see no reason why those contracts and dealings should be avoided, merely because the Court may afterwards appoint a guardian of his person or property.

15. Moreover I very much doubt whether the provisions of Section 3 of Act IX of 1875 were ever intended to apply to those cases, where a minor has actually attained his majority, before any certificate under Act XL has been granted. I think the language of the Act shows, that it is only intended to apply in cases where the person and property of the minor have been placed under the care of a guardian before he has attained his full age. If he has once attained that age, I am disposed to think that the provisions of the Act are not intended to have a retrospective effect, and to restore a person to the status of a minor, who has once attained his majority.

16. I, therefore, agree with the learned Judge of the Court below and consider that this appeal should be dismissed with costs on scale 2.

