Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kumar Biseswar Roy and another v. *Kumar Shoshi Sikhareswar Roy and another, from the High Court of Judicature at Fort William in Bengal; delivered November 22nd*, 1889.

Present:

LORD HOBHOUSE.
LORD ASHBOURNE.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

THE matter in dispute in this case lies within a very narrow compass. The 55th section of the Bengal Court of Wards Act, Act 9 of 1879, provides that "No suit shall be brought on "behalf of any ward unless the same be "authorised by some order of the Court"—(that is the Court of Wards). "Provided that a "manager may authorise a plaint to be filed in "order to prevent a suit from being barred by the "Law of Limitation, but such suit shall not be "afterwards proceeded with, except under the "sanction of the Court." The Appellants in the year 1879 were wards of court; and Hurrogobind Bose had been appointed manager of their estate. On the 17th November 1879 Hurrogobind Bose wrote a letter to the Plaintiff in this suit, Biseswar Moitra, authorising him to institute a suit on behalf of the wards at his own risk and responsibility, in order to prevent the application of limitation. The letter refers to applications to the collector, and to the Commissioner, and to opinions expressed by them;

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but it does not mention any order of the Court of Wards, nor does it purport to come from the Court of Wards at all. It is an authority of the manager under the second clause of section 55 of the Act to Biseswar Moitra to institute a suit for the purpose of saving the time of limitation. On the same day the Plaintiff instituted the suit. It seems to have been doubted in the High Court whether he had authority to institute the suit. Their Lordships consider that the manager had the right to give Biseswar Moitra the authority, and that the suit was properly instituted. Then came the question whether the suit should be prosecuted. Biseswar Moitra took immediate steps to get an authority from the Court of Wards to prosecute the suit, and he applied to the Civil Court several times to give him time to produce his authority to prosecute the suit. On the 8th May 1880 a letter was written, which, if it came from the Court of Wards, would show that they were then of opinion that the suit should go on, for it purports to be an authority from the Officiating Collector of Rajshahye, authorising Biseswar Moitra to act as next friend of the infants. But it does not purport to come from the Court of Wards, and it is quite clear that nobody treated it as being an authority from the Court of Wards, because on the 10th May an application was made to the Civil Court to postpone the case, without any mention of the letter of the 8th May as being an authority to prosecute the suit. However that may be, on the 28th May a letter was written which does purport to convey the opinion of the Court of Wards. It was written by the Assistant Collector to the Government pleader; and the writer requested the Government pleader "to take steps at once "to inform the Court, and intimate to the "Mookhtar of the junior branch, Biseswar "Moitra, that the Court of Wards does not

" authorise the suit." That letter was communicated to the Court. On the same day an application was made to the Court, and the letter was produced which refused sanction to the prosecution of the case. Upon that the Plaintiff applied for time to get the sanction of the Court of Wards, and time was given him, and on two subsequent occasions further time was given that he might get the sanction of the Court of Wards. Ultimately the time was enlarged until the 14th of August, and on the 14th of August, there being nothing said in contradiction of the letter of the 28th of May the Subordinate Judge ordered that the case should be struck off the file. It appears to their Lordships not only that he had jurisdiction to strike the case off the file, but that he was quite right in doing so. He had before him a suit which, however lawfully instituted, was by law incapable of being prosecuted without a sanction which the Plaintiff was unable to obtain.

Their Lordships therefore are of opinion that this appeal should be dismissed with costs; and they will humbly advise Her Majesty in accordance with that opinion.