

(1933) 10 AHC CK 0051
In the Allahabad High Court

Collector of Bulandshahr

APPELLANT

Vs

Gokul Chand

RESPONDENT

Date of Decision : 31-10-1933

Acts Referred:

Citation : (1933) 10 AHC CK 0051

Final Decision : Dismissed

Judgement

Sulaiman, C.J.—This is an appeal by the Collector as manager of the Court of Wards against the plaintiff who was the creditor of the wards. In August 1927, the estate of the wards was taken over under the superintendence of the Court of Wards and the Collector of Bulandshahr began to manage the estate. The plaintiff Gokal Chand held a promissory note dated June 26, 1926, said to have been executed by the wards for Rs. 5,000, which together with interest amounted to Rs. 6,750 on June 10, 1929, when the present suit out of which this appeal has arisen was tiled. Originally the Collector was not impleaded as a defendant but on his own application, dated July 23, 1929, he was made a defendant. In this application he alleged that the estate had not till then been released by the Court of Wards and that the suit as against the defendants named in the plaint was improper and contrary to law and that the Court of Wards proposed to set up a defence in the case on behalf of the defendants and could not do so unless it was made a party. He accordingly prayed that he might be made a party and allowed an opportunity to set up a defence. The Court on July 31, 1929, made the Collector a party. In the written statement filed on his behalf he took the plea inter alia that the estate had not been released by the Court of Wards and inasmuch as no notice had been given to the Collector u/s 54, Court of Wards Act, the suit was not maintainable. It may be added that a similar plea had been taken by the other defendants in their written statements.

2. The Court below has come to the conclusion that the estate had in fact been released on June 10, 1929, and that accordingly there was no defect in the suit either on the ground of original non-joinder of the Collector or on account of

want of proper notice to him. The learned Sub-Judge has further held that a previous notice given by the creditor u/s 16, Court of Wards Act in substance complied with the requirements of the provisions of Article 54 of that Act. There were other pleas as regards absence of due execution and want of consideration which have all been decided against the defendants and which are not now seriously pressed before us in appeal. The two main points for consideration before us are: (1) whether the estate had or had not been released by the Court of Wards on June 10, 1929, and (2) if it had not been released then whether any notice as required by Section ,54 of the Act was served on the Collector.

3. It appears that owing to difficulties experienced in paying off the large debts that were out-standing the Collector reported to the Court of Wards for the release of the estate and the Court of Wards applied to Government for sanction to release the estate. On May 3, 1929, the Governor-in-Council granted the necessity sanction under the third proviso to Section 44, Court of Wards Act IV of 1912 to the release of the estate from the superintendence of the Court of Wards. This sanction was communicated to the Board of Revenue, and the Secretary to the Board of Revenue forwarded a copy of the sanction to the Commissioner of the Division for information and necessary action. The letter further drew the attention of the Collector to Rules 341, 342 and 315 of the Court of Wards Manual and asked that actual date of release be reported for publication in, the U.P. Gazette.

4. On May 29, 1929, the Commissioner forwarded a copy of that letter to the Collector of the district for necessary action. On May 30, 1929, the Collector on receipt of it sent it on to the Special Manager, Court of Wards, for compliance. On June 1, 1929, the Special Manager of the Court of Wards addressed a notice to the Collector saying "if you say I may fix June 10, as the date for the release of Fatima Begam's estate." The Collector thereupon said "yes" on June 3, 1929. This endorsement was received by the Special Manager on June 4, 1929, and on the same date he noted thereon "orders issued". On June 26, 1929, the Special Manager forwarded it to the head clerk saying:

Issue orders to all the creditors and inform the ward: hand over all the papers to her son on June 10, 1929.

5. One more document is parwana issued by the Special Manager to the plaintiff in which he stated that as the order of the release of the estate had been received from Government, information was given that the estate "will soon be released from the management of the Court of Wards." In this parwana no specific date was mentioned for the release. Apparently something more was done in pursuance of the order referred to above, but we are somewhat in the dark as to what exactly happened on June 10, 1929, which had been the date fixed for the release of the estate. All that we know is that on July 23 following, the Collector applied to the Court asserting that the estate had not in fact been released till then. Subsequent correspondence to some extent indicates the same. We have not got before us all the correspondence, but on October 10,

1929, a Government order was issued from the Revenue Department to the Secretary, Board of Revenue, in the following terms:

With reference to your letter No. 631-X-127 (22) 29, dated October 1, 1929, I am directed to say that in the circumstances stated Government are pleased to cancel the order issued in Government Order No. 732-A-184, dated May 3, 1929, sanctioning the release of the Fatima Begum's estate, Bulandshahr District, from the Superintendence of the Court of Wards.

6. A copy of this order was forwarded in the usual course by the Board of Revenue to the Commissioner who sent it on to the Collector for information and necessary action. It seems to us that the Government order proceeded on the assumption that the estate had not been released and that it was not necessary to assume superintendence afresh but that it was sufficient merely to cancel the previous sanction which had been issued. It is also an admitted fact that no notification was published in the Government Gazette announcing that this estate was ever released or that it was taken over under the superintendence again. On the other hand all the proceedings up to June 6, 1929, point to the conclusion that the estate was to be released on June 10, 1929, and would have been so released in the ordinary course.

7. The plaintiff asked for the inspection of all the papers and correspondence passing between the Collector and the Court of Wards from the time of the assumption of the superintendence till the time of the suit. The Court of Wards took the plea that most of these papers were confidential and could not be disclosed. The Special Manager, Babu Debi Charan, went into the witness box and although he stated that the estate had not been released by the Court of Wards, he declined to supply detailed information on certain questions put to him by the Counsel for the plaintiff. The Court also, considering that some of the correspondence was confidential, did not insist on its production. The learned Sub-Judge, however, has come to the conclusion that because the Court of Wards had done all that it would have done on May 21, 1929, the estate was in the eye of the law released. His conclusion seems to be that in view of what had happened up to June 6, 1929, the estate must be deemed to have been duly released. In our opinion this view is not correct.

8. The order of the Board of Revenue, forwarding a copy of the sanction received from Government to the Commissioner for necessary action and directing the attention of the Collector to Rules 341, 342 and 345 as well as asking for a report as to the actual date of the release did not automatically bring about a release on May 21, 1929. Obviously a convenient date had to be fixed by the Collector on which the requirements of the rules could be complied with and that date was to be reported to the Court of Wards. No doubt it was not necessary for the release to become operative that it should be notified in the Government Gazette. The notification referred to in Section 51 is of the fact of the release and the section does not mean that release cannot take effect till it has been notified in the Gazette but there is no doubt that a date for the release has to be fixed

and the release comes into effect on such date, and it is this date which has to be reported to the Court of Wards in order that necessary notification may be issued. We must, therefore, hold that the release did not come into effect earlier than June 10, 1929, and we must also hold that the Collector had in fact fixed that date for the release of the estate.

9. On the other hand, the mere fact that the Government proceeded on the assumption that the estate had not been released, and that the sanction previously given could be revoked of the fact that there had been no notification in the Government Gazette would not be absolutely conclusive. It may well be that although having regard to what happened on or about June 10, 1929, the estate was in the eye of the law released nevertheless the local authorities and the Court of Wards on their recommendation took the view that the estate had not in law been released. It seems to us that the Court Ought to have brought to its notice all the fact which happened on or about June 10, 1929, which had been fixed for the release and not merely the subsequent opinion of the higher authorities that the estate had not in fact been released.

10. We have already noticed that the plaintiff asked for inspection of the papers of the Court of Wards and for production of the correspondence. These were not produced on the ground that they were confidential. No doubt many of the papers must be confidential and it is for the Court of Wards in charge of those papers to consider whether it would or would not allow them to be produced in Court. But as the present claim is being defended in the interests of private owners, reports containing a recital of the facts as they happened on or about June 10, 1929, might not be so confidential as to make it impossible for the Court of Wards to allow them to be produced. But we undoubtedly find it very difficult to decide this question of fact without having before us the detailed particulars which must be contained in the reports submitted by the Special Manager and the Collector on or about that date. The defendant has undoubtedly these reports in his possession and it seems to be unfair to the plaintiff that it should beheld that the estate had not in fact been released when the important documents which would establish the fact, conclusively, are actually withheld.

11. We would accordingly allow this case to stand out for two weeks in order that the Counsel for the defendant may ascertain whether the Court of Wards would be prepared to produce in Court; (1) the report, if any, made by the Special Manager of the Court of Wards on or after June 6, 1929, recommending that the estate should not be released or that its release should be cancelled; (2) the report of the Collector made to the Court of Wards through the Commissioner on or after June 6, 1929, and before July 21, 1929, in which he might have recommended that the estate should not be released or that its release should be cancelled, and (3) the communications that passed between the Special Manager and the Collector between June 6, and July 23, 1929 which would show why the original intention of releasing the estate was abandoned, if at all.

Sulaiman, C.J.

12. In pursuance of our order dated October 10, 1933, the Court of Wards has now tendered 14 documents and one affidavit. As the plaintiff had insisted on the production of this correspondence in the Court below, these papers were brought to the Court, but an objection was taken on behalf of the Court of Wards that it should not be compelled to file them because they were confidential and that objection was allowed by the Court. These documents were not then filed. We have considered it necessary to examine these documents in order to enable us to pronounce our judgment. We have pointed out in our previous order that the events up to June 6, 1929, pointed to the release of the estate on that date, whereas events after July 21, 1929, pointed just the other way. There was therefore great difficulty in deciding what actually happened on June 10, which was the crucial date. In order to decide whether the estate was in the eye of the law released or not, we considered it absolutely necessary to bring on the record the additional correspondence which passed between the Special Manager and; the Collector and the higher authorities, as they would disclose all the facts in their true light. Counsel for the plaintiff does not consent to the production of this evidence but there is no doubt that on his behalf these very papers had been summoned in the Court below and were considered by his client to be essential. We accordingly admit them. Mr. Pearey Lal Banerji, Counsel for the plaintiff, states before us that he does not wish to produce any evidence to rebut this additional evidence. We accordingly direct that they be admitted and form part of the record under Order XLI, Rule 27, Civil Procedure Code, Documents Nos. 1 to 12 and 14 are original documents the genuineness of which is admitted by Mr. Banerji on behalf of the plaintiff. Document No. 13 is a copy of an original document which also has been produced and the correctness of the copy and the genuineness of the original are admitted by Mr. Banerji.

JUDGMENT

13. Three suits Nos. 47, 4S and 60 of 1929, were filed in the Court of the Subordinate Judge of Bulandshahr by different sets of plaintiffs against the same defendants. The first two suits were filed on June 10, 1929, and the last one on July 21, 1929. First Appeals Nos. 299 and 300 of 1930, arise out of the first two suits, respectively, and First Appeal No. 298 of 1930, arises out of the last suit. For the sake of convenience it would be necessary to dispose of all these three appeals by one principal judgment inasmuch as the points arising in the three cases are identical. The facts are given at some length in our order dated October 10, 1933, in First Appeal No 299 of 1930, which arose out of the first suit No. 47 of 1929. A history of the proceedings which took place between the parties up to June 6, 1929, and again from July 30, 1929, onwards are also given in that order. In order to complete it, it is necessary now to state what happened during the interval as now appears from the additional evidence admitted by us.

14. June 10, 1929 had been fixed as the date for the release of the estate to the ward. On that date her son applied to the Special Manager that an order for releasing the estate had been received on June 8, 1929, directing that charge

should be handed over on June 10 and that the bond should be registered, but that; the ward was at Meerut and as those days were the days of a religious holiday she would come after those holidays, namely, on June 19, and would get the bond registered and that in the meantime he would have all the papers ready and would file them. The Special Manager noted on it that he should be informed that this should be done on the 19th positively. Intimation was again sent that the taking of the charge and the registration of the bond should take place on June 19, 1929, positively. The ward's son again applied that the bond would be faired out and typewritten on July 1. On this the Special Manager wrote to the Collector that the ward's son wanted that the estate should be released on July 1, 1929, as he had already told him verbally and that if approved, the Collector might fix July 1, as the date for releasing the estate. On this the Collector put down "yes". But on July 1, the ward did not turn up although she had been informed that the bond should be executed on the 1st of that month. Either the Collector or the Special Manager (the signature is illegible) ordered that it should be put up when she came. There was a second note on July 3, 1929, that the ward had not turned up till then and that the execution of the release bond and the report to the Court were being delayed. On the 4th it was ordered that a registered letter should go to her inquiring why she did not sent her son on July 1, to take over charge and that she might be asked to take charge at once. This letter was duly received, but neither the ward nor her son came till the July 6. Either the Collector or the Special Manager noted on July 8, 1929 "await reply." The registered letter sent to the ward was returned with the endorsement "re fused."

15. The proceedings dragged on, and on July 16, 1929, the registered letter which had been returned was put up for orders. On July 17, 1929, the Special Manager reported to the Collector that the ward's son had been told that he would get the estate released on July 1, 1929, if the Collector agreed to it, but he did not come on that date and the registered letter sent to the ward had been returned with the en dorsement "refused." The Special Manager asked the Collector that if the latter wanted to give her more time he might fix some other date for the release of the estate and" suggested that August 1, should then be fixed and the ward informed accordingly. On this the Collector on July 21, 1929, noted "yes." The Special Manager then, on July 22, directed that orders should issue to the ward to get the estate released on. August 1. On July 23, 1929, a letter was issued to the ward that the Collector had fixed August 1, 1929, for the release of the estate and that she should get the deed of release executed and registered. On July 30, a medical officer wrote to the ward's son that she could not reach her village by July 31, as the condition of her heart was not good enough to allow her to travel over such a long distance. On August 1, the ward's son informed the Special Manager that he had wired to his mother asking her to come, but she had not arrived. On August 2, 1929, the Special Manager reported to the Collector that the ward's son was expecting his mother shortly and as soon as she came the estate would be released. He asked for instructions

whether he should wait for her arrival or release the estate handing over the charge to her son. He also noted that the Government Pleader had advised him that the estate could not be released unless the release bond was signed and executed by the ward herself. On this the Collector made the following order on August 3, 1929: "We shall have to wait for sometime more." No other date appears to have been fixed for the release thereafter.

16. On July 23, 1929, the ward filed an application in the Court stating that her estate was still under the management of the Court of Wards and praying that the Collector of Bulandshahr who was the Manager of the Court of Wards, should be made a party to the suit. The plaintiff did not admit this allegation, but in order to remove any possible contention, agreed to allow the Manager of the Court of Wards to be made a party to the suit. The Court on this ordered that the plaintiff should apply for making the Court of Wards a party to the suit. In the meantime, the Collector applied to the Court on July 30, 1929, stating that the estate was under the management of the Court of Wards and the Collector was in charge of it and that the estate had not till then been released by the Court of Wards. It was further stated that the suit as against the defendant was improper and contrary to law and that the Court of Wards proposed to set up a defence in the case on behalf of the defendant, but could not do so unless the Court of Wards was made a party. The Collector accordingly prayed that he be made a party to the suit as Manager of the Court of Wards and might be allowed an opportunity to set up a defence. On this application the plaintiff filed another application on the same date stating that he had no objection to the application made by the Collector, the Manager of the Court of Wards, for being made a party to the case and that incase the application was allowed, permission might be given to the plaintiff for making an amendment in the plaint. The Court ordered that the petitioner should file an application for the amendment of the plaint which he wanted to make and the order would be passed thereon then, but dismissed the application for making the Court of Wards a party to the suit. It was on this that the plaint was amended and the Collector was added as a party and paras. 3 and 4 were re-drafted. The history of the proceedings from this date onwards has already been given in our previous order.

17. We may, however, mention two letters. On August 23, 1929, the Collector wrote to the Commissioner that the order received for the release of the estate had been communicated to the ward and June 10, 1929, had been fixed for the purpose, but the lady got suddenly ill and left for her village and in the meantime the creditors filed suits and got the money which was standing to the credit of the estate attached. He stated that the claims of these creditors had not been admitted by the Collector and they had made a mistake of not joining the Court of Wards as a party to the suit and not giving the necessary notice and" that therefore the Collector was advised by the Government Pleader that the suits having been filed on the last day of limitation, if defended, would be dismissed. He informed the Con-missioner that as the cases were pending and objection had been raised on behalf of the Court of Wards, the estate stood to lose a big sum

of money by its release at that moment. He accordingly suggested that it might not be released till the cases were decided. The Board of Revenue, as the Court of Wards, accepted the recommendation of the Collector and on October 1, 1929, sent a communication to Government stating the facts already mentioned by the Collector and expressing their opinion that it would be unfair to the lady to release the estate until the cases were decided. The Board made the request that Government would be pleased to cancel their previous order to sanction for the present. The Government accepted this recommendation and ultimately cancelled the previous sanction. This completes the whole history as far as can be gathered from the correspondence that is now before us.

18. The state of affairs disclosed by these proceedings clearly shows that the ward, on the one hand, and the creditors on the other, were manoeuvring for position. In the early stage the Collector does not appear to have made up his mind that the release should not take place in order to defeat the creditors claims, but later on he appears to have acceded to the suggestion made on behalf of the ward that the release should not take place.

19. The creditors apparently came to know that June 10, 1929, had been fixed by the Collector for the release of the estate. They also apparently came to know that a large sum of money was lying in the Government Treasury to the credit of the estate which would be paid over to the ward as soon as the estate was released. They believed that, if they filed their suit on June 10, 1929, the very date on which the estate was to be released, and got the money attached, they would be able to recover their amount quickly. They acted on that information and proceeded on the belief that the estate would be actually released on June 10, 1929. This accounts for the institution of their suit on that date and the omission to implead the Collector in the suit. As a matter of fact, June 10, 1929, was not the last day of the limitation at all. The three years on the first promissory note would have expired on June 26, and the three years on the second and third promissory notes on July 26. The necessity for the hurry in the filing of the suit was due to the proposed attachment of the money in the hands of the Court of Wards which was in contemplation. We know it as a fact that immediately on the institution of the suit an application for the attachment of the money was made and an attachment order issued in the evening of June 10.

20. On the other hand, the advisors of the ward seem to have concluded that if by some means or other the release of the estate were postponed, the creditors would be placed in a fix and their omission to implead the Collector might ultimately prove fatal. The ward apparently left the place and possibly evaded appearance before the Collector and produced a medical certificate to show that she was ill. It is impossible for us to say definitely whether this was true or whether it was a mere dodge to serve as an excuse for (ion-appearance. But the fact remains that she did not appear to take over charge of the estate and the Collector accommodated her and postponed the date fixed, for the release from time to time. On July 23, 1929, the creditors were informed by the application

made by the, ward that the estate had not in fact been released. If they had acted promptly they still had a winning card in their hands as by serving notice on the Collector immediately they would have gained two months" extra time.

21. Two important questions arise in consequence. The first is whether the estate was in fact released on June 10, 1929. If the estate was released, then, there is absolutely no difficulty in the suit and the plaintiffs' claim must succeed. On the other hand if the estate was not in the eye of the law released on June 10, 1929, then the Collector was a necessary party to the suit and without previous notice the suit would not be maintainable against him. A subsidiary question will arise whether an application made on a previous occasion was tantamount to notice and fulfilled the requirements of Section 54, Court of Wards Act. If the previous application was not a sufficient notice then the suit must be dismissed on the ground of want of due notice. If, on the other hand, the previous notice was sufficient then there could be no difficulty as regards limitation because the two months" extra time allowed to the plaintiffs would be excluded and the suit would be within time. So the second question is, whether the previous applications made by the Collector amounted to valid notices.

22. We may also mention that the learned Counsel for the plaintiffs has pointed out that there are certain acknowledgments on the record which, according to him, would save limitation. It is wholly unnecessary to go into this question at this stage because if due notice had been given then limitation is obviously saved. If no notice had been given then the suit must be dismissed. The question whether there had been an acknowledgment which would save limitation would only arise when a fresh suit is instituted. We may also point out that there is no statement in the plaint indicating that on account of any acknowledgment of the date made by the defendant limitation had been saved as required by Order VII, Rule 6, Civil Procedure Code. As indicated in our previous order everything up to June 6, 1929, pointed to the estate being released on June 10, while everything from July 23, onwards showed that the estate had not been released. The question is whether it was in fact released on June 10.

23. When a Court of Wards takes over the superintendence of an estate its management and right to possession vest in it for the time being. When the estate is released the management passes on to the ex-ward. The responsibility of the Court of Wards has to cease on the date of the release. Up to the time of the release the Court of Wards continues to be liable for all claims. The question is what is the point of time at which the release of an estate can legally take place. Unfortunately the Court of Wards Act is not quite clear. But one must presume that unless release legally takes effect on the date of the original sanction by the Court of Wards, the release can take place only when some act is done by the Collector as representative of the Court of Wards. We have already given reasons in our previous order why the sanction of the Court of Wards would not automatically bring about the release of an estate. In this particular case we have also pointed out that the form of the sanction indicated that the

Collector was to comply with the rules laid down for the release of an estate by the Court of Wards and was to fix "the actual date of release" and report the same for publication in the U.P. Gazette. On an examination of the rules in the Manual which calls upon the Collector to do certain things it is quite clear that the release can only take place on the date which is fixed by the Collector and announced previously and on which date he complies with the requirements of the Various rules which we shall mention presently. It is, therefore, our conclusion that the estate could not possibly have been released before June 10, 1929, which was the first date fixed by the Collector for the release.

24. But they did not do this and took up the position that the estate had in fact been released. Again, when the Collector applied on July 30, 1929, the creditors did not accept the position that the estate had not in fact been released.

25. Chapter VI, Court of Wards Act, contains the provisions relating to the release of an estate. u/s 44 the power vests in the Court of Wards to release an estate at any time. Section 45 gives it power to retain superintendence in the case of the death of the ward and certain other cases. u/s 46 superintendence can be retained when there are several proprietors. u/s 47 the Court of Wards can bind a guardian of a minor ward at the time of the release whose appointment is to take effect from the date of the release and the appointment has to be notified to the District Judge. Section 48 refers to the disposal of the estate after the death of the ward and Section 49 deals with the powers to be exercised in respect of the property the superintendence of which is retained. Then Section 50 provides that when the Court of Wards releases the property of any proprietor from superintendence, it shall deliver to the proprietor all documents of title and all papers and accounts other than Government records relating to such property. u/s 51 when the Court of Wards releases the estate the fact of such release is to be notified in the Gazette. Section 52 provides that the period during which the estate had been under superintendence is to be excluded from the period of limitation as regards the suits of claimants who sue after the release whose liabilities have not been discharged.

26. One thing is quite clear and that is that none of the things required to be done at the time of the release of the estate were done in this case: (1). Documents of title, papers and accounts were not delivered to the Court, of Wards. (2) No report was made to the Court of Wards of the date of the actual release as required by Rule 342(3). The Court of Wards never notified the fact of the release in the Government Gazette. (4) The preparation of the list and the destruction of some papers as required by Rule 341 were not done, (5) There was no doubt a previous announcement that the estate would be released on June 10, but the fact of the release of the estate was not proclaimed to the tenantry and there is no proof that the date of the release was recorded by the patwari in the khewats as required by Rule 341. (6) The records were not made over to the proprietor as required by Rule 342. (7) The accounts were not closed nor were the closing accounts of the estate submitted as required by Rule 345

(8). In the Court of Wards Manual there are two forms Nos. 87 and 88; form No. 87 has to be maintained in triplicate one of which is retained in the District office, one in the Division office and one in the office of the Court of Wards. This form has to be filled up showing the number and date of the order as well as the date of actual release and the names of persons in whose favour the estate is released. No such form was filed up and none was sent to the Court of Wards. (9) Form No. 88 prescribes the form of the release bond which is to be executed by the Court of Wards in which it has to be said that the ward has been placed in possession of the estate with effect from a date mentioned therein and that he has received the balance in cash. No such release bond was, however, executed by the ward. (10) It is also clear that the amount standing to the credit of the estate was never paid over to the ward. (11) Lastly, there is the fact that the Government did not consider that the estate had been released and that its superintendence should be taken over afresh, but merely cancelled the previous sanction.

27. In view of all these circumstances we cannot, but hold that, although it had been intended that the estate should be released on June 10, the date was postponed from time to time and that in point of fact it was never actually released. That explains why the release was never notified in the Government Gazette. We must accordingly record a finding in favour of the Collector that the estate had not, in fact, been released at all and we must overrule the finding to the contrary arrived at by the learned Subordinate Judge on this point.

28. The second question is whether any sufficient notice, as required by Section 54, Court of Wards Act, had been served on the Collector. u/s 54 no suit relating to the person or property of any ward can be instituted until the expiration of two months after notice in writing has been delivered to, or left at, the office of the Collector or other person in charge of the property stating the name and place of abode of the intending plaintiff and the cause of action and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left. There were no statements in the plaints in these three suits that at any stage notice had been delivered to the Collector or left at his office. The omission is explained on behalf of the plaintiff on the ground that the suit in its nature was filed on the assumption that the estate had been released and accordingly there was no occasion for mentioning that a notice had been given to the Collector. It might, however, be mentioned that when the plaint was amended after the Collector was made a party, no addition was made to the effect that even if the estate had not, in fact, been released, due notice had been given to the Collector previously. So Section 54 has not been strictly complied with.

29. The learned Advocate for the plaintiff, however, relies on certain applications made by the three creditors on previous occasions and contends that those applications fulfil the requirements of Section 54, Court of Wards Act. Taking up the suits in their serial order, we find that in suit No. 47 of 1929 there was an

application made on January 10, 1928, in the Court of M. Abdul Wahid Khan Khalil, Assistant Collector, First Class, of Bulatidshahr. This gentleman has been examined and it is clear from his evidence that the Collector had deputed him to make inquiries into the claims of creditors and to ascertain the debts due from the estate. The plaintiff in suit No. 47 filed an application in the Court of M. Abdul Wahid Khah Khalil who was making such an inquiry. The application is on p. 52 and is styled as "an application for the ascertainment of the, debt due by Musammat Fatima Begam." It refers to the fact that a notice had been published in the Government Gazette and June 10, 1928, had been fixed "for the ascertainment of the debt u/s 17, Court Of Wards Act," and that through some mistake or inadvertence the petitioner had got no information of it till that; date which had been fixed for the ascertainment of other debts. The petitioner accordingly filed "an application for the ascertainment of the rent due to him by Musammat Fatima Begam." The application then stated the principal amount and interest due on the promissory note of June 26, 1926, and stated that it as payable to him, and that after the ascertainment of the amount the Amount due to the petitioner might be caused to be re-paid.

30. He added: "In case of non-payment, remedy will have to be sought against the executants of the document in Court." It is obvious that this application did not even purport to be a notice u/s 54, Court of Wards Act. It was professedly an application filed in response to the notice issued u/s 17, Court of Wards Act, and for the express purpose of getting the debt ascertained and it was styled "an application for the ascertainment of debt." On the face of it, it was an application filed in the Court of the Assistant Collector, who was making inquiries into the matter and was not a notice delivered 10 or at the office of the Collector. It no doubt gave the date of the promissory note and the principal and interest due upon it, but asked that the amount due be paid to the petitioner after it had been ascertained. No doubt a clause was added that in case of non-payment remedy would have to be sought against the executants of the document in Court, but it did not in express terms purport to be a notice of the suit proposed to; be filed. The Collector could certainly not have understood it to be a notice.

31. Now, Section 17, Court of Wards Act, requires that on the publication of the notification of the superintendence of the Court of Wards claimants should give notice of their claim. Section 18 requires that the effect of the failure to notify the claim is to extinguish it. If no notice is given, then the claim must be deemed for all purposes and on all occasions whether during the continuance of the superintendence of the Court of Wards or afterwards to have been duly discharged. Notice is, therefore, necessary if a creditor wishes to keep his debt alive. The omission to give notice in response to notification u/s 17 has the effect of extinguishing the claim altogether. Whereas the omission to give notice is required by Section 54 of the Act does not amount to an extinction of the claim itself but merely makes the suit not maintainable with the result that the suit would have to be dismissed for want of due notice and the creditor would be entitled to serve a notice on the Collector and then file a fresh suit.. Thus, there

is a marked distinction between a notice served u/s 17 of the Act and a notice given u/s 54 of that Act. The object and the purposes of the two notices are quite different and the legal consequences of the omission to give the notices are equally distinct. It seems to us that the Court of Wards Act contemplates two separate and independent notices. One u/s 17 in order to keep alive the claim and to prevent it from being deemed to be discharged and the other u/s 54 so as to make the suit maintainable. This view was clearly expressed by Stuart, C.J. and Raza, J. in AIR 1928 495 (Oudh). The learned Judges pointed out that the provisions of Section 54 are mandatory. In the case before them also a previous document had not been put forward in the plaint as a notice of the nature contemplated by Section 54. The reference was only to Section 17. They accordingly observed-

But apart from that we are of opinion that under the Court of Wards Act (Act IV of 1923) two notices are necessary before a suit of this nature can be instituted. In accordance with the provisions of Section 17 the creditor has to present his claim. The Court of Wards may accept the claim. Then there will be no need for a suit. If the Court of Wards does not accept the claim, the creditor has then to proceed in a suit under the provisions of Section 20 and if the creditor does proceed to a suit he has then to issue the notice required under s. 54 and the suit cannot be instituted until two months have expired from the date of the delivery of the second notice. The object of granting the two months to the Court of Wards is apparently to give two months' time for the preparation of the defence.

32. In the case of (Kaviraj) Baroda Kant Sen Vs. Court of Wards in charge of Baraon Estate, decided by a Full Bench of this Court of which one of us was a member but in which the point for consideration was slightly different it was pointed out that there was some defect in the drafting of the Act and that there was no express provision for the exclusion of time when there was considerable delay in the Court of Wards making up its mind whether a claim should be admitted or not. The Bench expressed the view that the creditor was not precluded from suing while the Court of Wards was still considering the matter. The Bench then pointed out that-

The notification of a claim u/s 17, Court of Wards Act, is merely an information to the Collector of the particulars of the claim. It is not necessarily a notice of a civil suit on the basis of that claim.

33. They concluded that, however, unfortunate it may be for the claimants, they could not in the absence of any enactment require that the period of limitation should be suspended, and during the period of inquiry, it should be held that the running of limitation had been stopped.

34. We think that the object of serving notice u/s 54 is to inform the Collector of the proposed suit and give him time to prepare his defence and to make an offer if so advised. When an application is filed u/s 17 of the Act professing to be one

for the ascertainment of the debt and in response to the notification u/s 17 the Collector cannot possibly imagine that this is a notice of the suit itself. Indeed, if the provisions of the Act are examined, it would appear that after the notification and notice u/s 17 the Collector has plenty of time to consider whether he should admit a claim or not and even if he admits it whether he should not reduce the amount of interest. If the Collector does not admit the principal claim or reduces it then the claimant can, as of right, sue him. But the claimant has to submit to a reduction of interest ordered by the Collector. Whereas when notice is served on him of the proposed suit the Collector has no option but to offer the amount claimed if due or else dispute it in a Civil Court. Section 17 is in Chap. IV which is headed as "Ascertainment of Debts." Section 54 is in Chap. VII of the Act, which is headed as "Suits." Section 54 requires that notice should be of the civil suit "as indicated by the marginal note" and that it should state the name and place of abode of the intending plaintiff the cause of action and the relief which he claims and that the plaint shall contain a statement that such notice had been so delivered or left. The exact cause of action must be stated and the actual relief claimed must also be stated. Whereas these particulars are not essential in the notice of claim for the ascertainment of debts in Section 17. Indeed, there is no occasion for a statement of the relief as at that stage a suit may not be contemplated at all.

35. The learned Counsel for the respondents has strongly urged before us that the application of January 10, 1928, fulfils all the requirements of Section 54 because the date of the promissory note and the amount due thereon were mentioned; but the petitioner had asked the Assistant Collector to ascertain the amount and claimed that the amount so found due should be paid to him. We do not take the last sentence in the application as amounting to a notice of the suit, but a mere statement that if the amount is not paid, the remedy would have to be sought in a Court of Law. We are unable to hold that the Collector could have had the least idea that this was a notice served on him u/s 51 and that he should make preparations for defending the claim. We do not mean to lay down that it is not possible for a claimant to combine both the notices u/s 17 and u/s 51, when limitation is about to expire, in one single document, but the document must profess to be such a compound notice and must inform the Collector that notice of the civil suit is being served upon him so that he may be ready with his defence. We have already pointed out that the creditors themselves did not suggest in the plaint that this previous application was meant to be also a notice u/s 54, Court of Wards Act.

36. It is further argued on behalf of the plaintiff that the notice contemplated u/s 54 is confined to a very limited class of cases which are against the person and property of the ward and does not govern other cases against the ward. We, however, think that Section 54 is intended to be of a comprehensive nature and requires a notice in the case of suits brought against the Collector relating to the person and property of the ward and that it is equally comprehensive enough to include a suit On a promissory note brought against the ward which would result

ultimately in a money decree being passed against him which can be executed only either by his arrest or by the attachment of his property.

37. In suit No. 48 of 1929, we have an application of January 10, 1928, of a similar form with slight variations in phraseology. It professes to be an application for; the verification of debts due by Musammat Fatima Begam: it was filed, in the Court of the Assistant Collector : and did not purport to be a notice u/s 54 delivered to or at the office of the Collector. For, the reasons given above we hold that this application also did not amount to a notice u/s 54, Court of Wards Act. The application in the last suit No. 60 of 1929, is of February 6, 1928, and is slightly differently worded. But it also professes to be an application for the verification of the debt due by Musammat Fatima Begam and was given on account of the notification of superintendence of the Court of Wards and for the purpose of getting the debt verified. The petitioner alleged that he was putting up that application "for verification of doubt." There was no reference to Section 54 and it did not profess to be a notice under that section. But it was an application which is said by the plaintiff to have been delivered to the Collector personally although there is no endorsement on it by the Collector. It has the last feature which distinguishes it from the other two. But for the reasons already given we are of opinion that even this application did not purport to, be nor did it amount to a notice of the suit u/s 54 of the Act. Nor could the Code (sic) have understood that such an application was meant to be a notice of the suit served upon him.

38. We are, therefore, compelled to hold that notices required by Section 54 of the Act, were not served on the Collector at all and that the previous applications filed in the Court of the Assistant Collector for the ascertainment of the debt did not only amount to valid notice u/s 54 so as to remove the defect In a case arising u/s 80, Civil Procedure Code, which has provisions somewhat, similar to Section 54, Court of Wards Act, their Lordships of the Privy Council in the case, of Bhagchand Dagdusa v. Secretary of State 104 Ind. Cas. 257 : AIR 1927 P.C. 1976 : 54 I.A. 338 : B 725 : 25 A.L.J. 641 laid down that the provisions of Section 80 were mandatory and were comprehensive in their nature so as to apply to all suits and that it was no ground for dispensing-with the two months, notice required by the section merely because serious and irreparable damage might be occasioned to the plaintiff if not prevented. This case was strongly relied upon by the Oudh Bench in the case quoted above. On pp. 654 and 655 Pages of 25 A.L.J.--[Ed.], their Lordships observed:

The Act, albeit a Procedure Cede, must be read in accordance with the natural meaning of its words. Section 80, is express, explicit and mandatory, and it admits of no implications or exceptions and that it imposes a statutory and unqualified obligation upon the Court and that a suit brought without such previous notice was unsustainable in limine, and that the plaintiffs commenced their suit before the law allowed them to sue and can get no relief either by declaration or otherwise and that whatever may be their rights, the suit must

fail, as by adopting such a Course, they have brought this result on themselves.

39. These observations apply equally to Section 54, Court of Wards Act. We must accordingly hold that owing to the failure to comply with the mandatory provisions of Section 51, which in terms are similar to Section 80, Civil Procedure Code, the present suits filed by the plaintiffs must fail. No doubt they were ill-advised in filling the suit in a hurry on July 10, in the expectation that they would be able to attach the money belonging to the ward as soon as the estate was released and they were further ill-advised in not serving a notice on the Collector and getting time extended when they were informed that it was asserted that the estate had not in fact been released. By persisting in their case that the estate had, in the eye of the law, been released, they might have made their position difficult for themselves, but the mandatory provisions of Section 54, have to be followed and given effect to, and we cannot, but hold that the suits as they stand at present must be dismissed. It is wholly unnecessary to consider whether limitation has expired or not, and whether time would not be extended to the plaintiffs on account of some acknowledgment made by the Collector. We express no opinion as to whether it is necessary that that acknowledgment should have been confirmed by the Court of Wards or whether the Court of Wards did, as a matter of fact, confirm those acknowledgments. These questions can only arise when fresh suits are instituted.

40. The last point urged on behalf of the plaintiffs-respondents is that it is not open to the Collector to take the plea u/s 54, Court of Wards Act, because it was at his own instance that he was impleaded in the suit. It is urged that the right to get notice must be deemed to have been waived when the Collector voluntarily came before the Court. We have already pointed out the circumstances under which the Collector was made a party. The ward first took the plea that the Collector was a necessary party because the estate had not been released. The Court ordered that the plaintiff should implead the Collector and amend the plaint; in the meantime the Collector applied for being made a party in order to enable him to put up a defence. The plaintiff stated that he had no objection to the Collector being impleaded. The Court, however, dismissed the application of the Collector for impleading him, but allowed the plaintiff to amend his plaint and add a fresh paragraph to the plaint. It was in these circumstances that the Collector was made a party. We are unable to hold that the mere fact that the Collector applied to the Court to be made a party in order that he might be in a position to put up a defence amounted to a waiver on his part of his right to get notice. His main object in being impleaded was to enable him to defend the claim and urge the ground inter alia that no proper notice had been served upon him. We are unable to hold that this right was lost because the Collector himself asked that he should be impleaded.

41. Lastly, it is contended that Section 54 would only apply to a case where the plaintiff institutes a suit against the Collector and not a case where the Collector is made a party subsequently either on his own application or by an order of the

Court. If one were to take this plea literally the fact is that it was the plaintiff himself who ultimately amended the plaint and made the Collector a party to the suit. But even if we take it that the Collector was made a party at his own instance or by the order of the Court (even though the Collector's application was actually dismissed by the Court) we must hold that Section 54, equally applies. If it be a fact, as we have found, that the estate had not in fact been released, then the plaintiffs had no locus standi to sue the ward at all. Their suit could not be proceeded with against the ward. The ward had taken the plea that the suit was not maintainable against her. The only person against whom the plaintiffs could have brought a suit was the Collector. It was, therefore, their own duty not only to implead him, but sue him alone, and exclusively. If in order to cure the defect which was in the suit on account of the provisions of Section 55, Court of Wards Act, the Collector was impleaded, his right of notice cannot be lost. It would not do for the plaintiffs to exclude the Collector from the array of the defendants and then continue the suit because in such an event the suit would fail. u/s 55, "no ward can be sued in any Civil Court otherwise than in the name of the Collector". If the plaintiffs wish to bring the Collector on the record, then they are met with the defect of want of notice.

42. If the contention urged on behalf of the plaintiffs were sound, the result would be that a plaintiff would bring a suit against a ward ignoring the Collector and as soon as the fact is brought to the notice of the Court that the estate is under the management of the Court of Wards and the Collector is a necessary party, indeed the only person who can be sued and then he is impleaded, they can turn round and say that no notice was necessary because the suit, as originally instituted, was not filed against the Collector. We must reject this contention. We accordingly allow this appeal, and setting aside the decree of the Court below, dismiss the three suits against the defendant.

43. We should, however, like to point out that as observed above, it was a case of manoeuvring for position. Each party trying to overreach the other and take advantage of any mistake made by the other. The creditors made the mistake of filing the suit on June 10, when the estate had not been released in order to seize the money. The ward tried her best to get the release postponed so as to entrap the creditors and get their suits dismissed. The creditors unfortunately failed to serve notice on the Collector which has resulted in a fatal defect in their suits, and we are inclined to suspect that the proceedings taken by the ward were taken designedly and intentionally to defeat the claim of the creditors by taking advantage of the mistake which had been made by them. In these circumstances we would direct that the parties should bear their own costs in the Court below. The Collector will however, get, his costs, of this appeal from the plaintiffs who will bear their own costs.