1906.
April 10.

Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice, Mr. Justice Middleton, and Mr. Justice Wood Renton.

In the matter of the property of the Minor FLORENCE MUTTIAH.

MUTTIAH *v.* BAUR.

D. C., Chilaw, 159.

Minor resident outside the jurisdiction of the Court—Power of Court to appoint curator—Ordinance No. 11 *of* 1868—*Courts Ordinance* (*No.* 1 *of* 1889), *s.* 71—*Civil Procedure Code* (*No.* 2 *of* 1889), *ss.* 582, 584.

A District Court has no power to appoint a curator over the estate of a minor who is not resident within its jurisdiction, even though the minor may be entitled to property situate within its jurisdiction.

In re Daisy Fernando (2 *N. L. R.* 249) followed.

THE material facts are stated in the following affidavit filed by the respondent in the District Court:—

"I Alfred Baur of Colombo make oath and say as follows:

"1. Having seen an advertisement relating to the sale of the land called 'Rajakadaluwa' estate, situated at Palugahawewa in

(1) (1894) 1 *N. L. R.* 100.

the District of Chilaw, I instructed my agent, J. C. Jayesinghe, to attend the said sale and bid for the same on my behalf.

" 2. The said property was put up for sale on the 25th day of February, 1905, by one P. G. Schrader, acting as 'commissioner' appointed in these proceedings to carry out the said sale at the upset price of Rs. 20,000. There was no bid at this or any higher sum. The commissioner thereupon inquired of those present what was the highest bid they would make. Thereupon my said agent made an offer of Rs. 10,000 for the land and subsequently raised the offer to Rs. 15,000, which is a just and reasonable price for the said premises.

" 3. E. R. Muttiah, the guardian appointed in this matter, who was present agreed to accept the offer of Rs. 15,000 conditionally, namely, subject to the approval of the District Court of Chilaw.

" 4. My agent paid down one-tenth of the said price and all charges and commissions, and at the request, I am informed, of the commissioner and his notary he signed the conditions of sale, which were then attested by the said notary.

" 5. The said commissioner or auctioneer on the 9th of March, 1905, I am informed, reported the facts connected with the auction to this Court, including the particulars of the said offer of Rs. 15,000 and asked the Court's order, and I am further informed that this Court on the 14th of March, 1905, sanctioned the acceptance of my said offer.

" 6. Before paying the balance purchase money, I consulted two senior counsel in Colombo in regard to the title to the said Rajakadaluwa estate. They have advised me that, in their opinion, it was a matter of doubt whether this Court had the right to appoint a curator of the estate of the above-named minor, who was admittedly not resident within its jurisdiction, and that the appointment of curator purported to be made and proceedings had thereafter may be pronounced a nullity in view of the doubt above referred to. And that consequently the title to the property was liable to be questioned at some future time.

" 7. I have been advised not to complete the purchase, but to apply to this Court for reasons above stated to have all proceedings vacated, the sale cancelled, and the moneys paid by me refunded."

Mr. N. J. Martin, Proctor for the said A. Baur, filed the above affidavit, and moved for a notice on the curator to show cause why—

(1) The appointment of the curator and all proceedings should not be vacated on the ground that the Court had no right to appoint E. R. Muttiah curator of a minor not resident within its jurisdiction.

1906.
April 10.

(2) The sale held on the 25th February, 1905, be not cancelled.

(3) The conditions of sale should not be declared of no binding effect.

(4) The sum of Rs. 1,500, being one-tenth of purchase money, and Rs. 375 deposited in Court should not be refunded.

(5) Why an order of payment to the said Alfred Baur of the said sums should not be issued by the Court to him.

The District Judge (W. L. Kindersley, Esq.) made the following order:—

" It is argued that the appointment of the curator is bad, the minor not living in the jurisdiction of this Court. It is objected that the Court cannot go behind its own order; only the Supreme Court can alter the order, *Sinnatamby v. Nallatamby* (1). The present application is made by the purchaser of a land sold by the curator with the leave of the Court. Of the purchase money, Rs. 15,000, a tenth part (Rs. 1,500) has been paid into Court. The purchaser now moves to set aside the appointment of the curator, the sale, to vacate the conditions of sale, and in short to render the whole proceedings nugatory on the ground of the want of jurisdiction of this Court to appoint a curator. *In re Daisy Fernando* (2) clearly shows that the District Court has only power to appoint a curator in cases where the minor is insane or ' *resident* within its district.' ' Resident ' can hardly apply to the property. The minor in question is not so resident, as admittedly the minor resides in Jaffna, and was so residing at the time when the order appointing the curator was made. It is clear then that this Court had no jurisdiction to appoint a curator, and all its orders are nugatory and invalid in this case. It is, I conceive, the duty of the Court to cancel its own order under such circumstances, and not to insist on an invalid sale being completed. Ordinance No. 12 of 1904 lays down the procedure. I therefore allow the motion of 8th August, 1905, and vacate the order appointing the curator. I cancel the sale held on 25th February, 1905, and declare the conditions to be not binding and order that the money paid be refunded.

" I order the curator to pay applicant his costs of this motion."

The curator appealed.

Bawa, for the appellant.

Dornhorst, K.C. (*Elliott* with him), for the respondent (purchaser).

Cur. adv. vult.

(1) (1903) 7 *N. L. R.* 139.

(2) (1896) 2 *N. L. R.* 249.

10th April, 1906. LASCELLES A.C.J.— 1906 *April* 10.

This is an appeal from an order of the District Court of Chilaw vacating a previous order of the same Court appointing the appellant curator of a minor's property.

In effect we are asked to review the ruling of Bonser C.J. and Lawrie J. in *In re Daisy Fernando* (1) ; for, although that case only decided that a District Court had no jurisdiction to appoint a curator of a minor's estate where the minor was resident out of Ceylon, it follows from the construction of section 71 of the Courts Ordinance (No. 1 of 1889) adopted by the Court that a District Court has no jurisdiction to appoint a curator of the minor's estate, if the minor is resident out of the district.

It was urged by the appellant that, upon a true consideration of the above-mentioned section, a District Court had jurisdiction to appoint a curator if the minor had property in the district.

To my mind the question is purely one of construction. The jurisdiction of the District Courts is given by statute, and it is to this statute that we must look for guidance on questions with regard to jurisdiction.

Section 71 of the Courts Ordinance consists of two paragraphs. The first of these is a reproduction of the corresponding section of Ordinance No. 11 of 1868. It declares that District Courts shall have care and custody of idiots, lunatics, and others of insane or nonsane mind *resident within its jurisdiction*, and confers certain powers upon the Court with regard to the appointment of guardians and otherwise.

So far as idiots, lunatics, and insane or nonsane persons are concerned, it is thus clear that the jurisdiction conferred by the section is confined to cases where the person in question resides within the local jurisdiction of the Court.

The second paragraph of the section which defines the jurisdiction of District Courts is new; it is not to be found in Ordinance No. 11 of 1868. It is in these words:—" Also in the like manner, with the same powers, the care of the persons of minors and wards and the charge of their property within its district shall be subject to the jurisdiction of the district court."

The words " also and in like manner " seem to me to indicate the intention of the Legislature that the jurisdiction of the District Courts, as regards minors and wards, should be of the same nature and subject to the same limitations, as the jurisdiction conferred on these Courts by the earlier part of the section with respect to lunatics and insane persons.

(1) (1896) 2 *N. L. R.* 249.

1906. *April* 10.

LASCELLES A.C.J.

These words must, I think, refer to the condition that the person under disability must be resident within the district—at least I can attribute no other meaning to them.

I also find it difficult to see why the jurisdiction of the District Courts should rest on one principle with regard to lunatics and idiots, and on another with regard to minors and wards.

I have not myself been able to see that chapter XL. of the Civil Procedure Code supplies an answer to the question under consideration. Section 584 seems to point to the view that the situation of the property and not the residence of the owner is the test of jurisdiction, but I do not think that any inference which can be drawn from this section is sufficient to establish this construction of section 71.

On the whole I think that the previous judgment of this Court was right.

It is admitted that the District Judge had no power to vacate his own order. I think the proper order will be to discharge the order of the District Court of the 14th November, 1905, and to substitute for that order an order of this Court to the like effect.

MIDDLETON J.—

In this case a minor living in Jaffna is possessed of an estate situate in Chilaw. The appellant, who was a brother of the minor resident in the district of Chilaw, obtained in the District Court of Chilaw, upon proper proceedings in that behalf, a certificate of curatorship in respect of the said property, and was thereafter duly authorized by the Court to sell the property. The property was put up to auction and was knocked down to the respondent for the sum of Rs. 15,000, of which he paid the sum of Rs. 1,500 on account of purchase money and Rs. 375 on account of expenses of sale, and bound himself hereafter to pay the balance within six months. The respondent took possession of the property and is still in possession.

It would seem that the respondent, having been advised that it was doubtful whether the District Court of Chilaw had jurisdiction to make the appointment of curatorship, by motion dated the 8th August, 1905, moved that Court to vacate its own order and all proceedings thereafter, including the sale. On the 14th November the Court allowed this motion. Against this order the appellant now appeals, and it is stated by counsel for the respondent that these are friendly proceedings taken with a view to obtaining an authoritative opinion from this Court as to whether the Court within the jurisdiction of which the minor is resident, or the Court

within the district of which the property is situate has jurisdiction to appoint a curator.

By section 64 of the Courts Ordinance, No. 1 of 1889, general jurisdiction over the persons and estates of minors and wards is conferred on the District Courts.

By section 71 of the same Ordinance it is enacted that " every district court shall have the care and custody of the persons and estates of all idiots and lunatics and others of insane and nonsane mind resident within its district, with full power to appoint guardians and curators of all such persons and their estates. . . . . ," and paragraph 2 goes on to say " also in the like manner, and with the same power, the care of the persons of minors and wards, and the charge of their property within its district, shall be subject to the jurisdiction of the District Court. " The words " in like manner, " as the Chief Justice points out, would seem to indicate that the jurisdiction of the District Court in the case of Minors, as in the case of insane persons, was to be tested by residence of the minor within its district.

With regard to idiots and lunatics and other insane persons, it is perfectly clear that the Ordinance intended that the Court having jurisdiction to appoint curators of their persons or effects should be the Court within which they were resident.

By section 582 of the Civil Procedure Code " every person who shall claim a right to have charge of property in trust for a minor under a will or deed, or by reason of nearness of kin or otherwise, may apply to the district court for a certificate of curatorship, and no person shall be entitled to institute or defend any action connected with the estate of a minor of which he claims the curatorship until he shall have obtained such certificate.

By section 584 " if the property is situate in more than one district any such application as aforesaid shall be made to the district court of the district in which the minor at the time of the application resides. "

From this section also it might be gathered that the Legislature intended that the Court, within which the minor was resident, should as a general rule be the Court having jurisdiction to appoint curators. The argument also of convenience would seem to apply in the case of minors, as well as in the case of lunatics and persons of insane mind.

In his judgment in *In re Daisy Fernando* (1) it was held by Bonser C.J. that a District Court has no jurisdiction to appoint a curator of the estate of a minor who is not domiciled in this Colony or

17–

(1) (1896) 2 *N. L. R.* 249.

1906. April 10.

MIDDLETON J.

resident within it, and in consequence of that judgment, Ordinance No. 12 of 1904 was passed.

From the judgment of Chief Justice Bonser it seems clear that he was of opinion that it was not property within its district which gave jurisdiction to the Court to appoint a curator, but the residence of the minor therein.

I think, however, that it is difficult to gather this opinion altogether from the terms of chapter XL. of the Civil Procedure Code, as he would appear to have thought, section 584 being the only section in that chapter which seems to point to that conclusion.

Looking, however, to the terms of the 2nd paragraph of section 71, I am inclined to the opinion that the Court within the district of which the minor is resident is the Court having jurisdiction to appoint a curator to his estate.

The appeal will therefore be dismissed, each side to pay their own costs in this Court. I agree with the order proposed by my Lord.

WOOD RENTON J.—

I agree with the rest of the court. I am unable to accept the view of Bonser C.J. in *In re Daisy Fernando* (1) that sections 582 *et seq.* of the Civil Procedure Code support his construction of section 71 of the Courts Ordinance. On the contrary, I think that section 584 is fairly open to the adverse construction put upon it by Mr. Bawa. But it is by section 71 of the Courts Ordinance that the present appeal must stand or fall; and, after careful consideration, it seems to me that the object and the effect of that section must be taken to be to confer on the District Courts the same limited jurisdiction as regards minors, idiots, and lunatics. I can think of no reason why residence should be a condition of jurisdiction in the latter case and not in the former; and, as a matter of mere interpretation, I cannot read the words " in like manner " in section 71 in a sense consistent with Mr. Bawa's contention. Under these circumstances we ought not, in my opinion, to allow section 584 of the Civil Procedure Code to weaken the natural construction of section 71 of the Courts Ordinance, especially as section 584 may be otherwise explained as having been enacted merely to indicate the intention of the Legislature that residence should be the test of jurisdiction even if the property of a minor is locally situated in various districts. On the substantive point which it decided, the judgment of Bonser C.J. in *In re Daisy Fernando* (1) is, I think, sound.

(1) (1896) 2 *N. L. R.* 249.

1906.
April 10.

WOOD RENTON—J.

As the point was discussed before us, I may say that, in my view, no argument against the present appeal can be deduced from the enactment of Ordinance No. 12 of 1904. That Ordinance merely gives jurisdiction to the District Court in the case of minors who are not resident in the Island. It might well be that, in accordance with the settled rule of law as to the territorial application of Colonial enactments the previously existing statute law was insufficient for the purpose. A somewhat similar view has been taken in England of the scope of section 116 (*c*) of The Lunacy Act, 1890. [*In re Watkins* (1) and *cp. South African Association v. Voget* (2)]. Accordingly Ordinance No. 12 of 1904 was passed to meet the difficulty. But I do not think that that Ordinance throws any light on the question whether, as regards minors *within* the Island, residence or the situation of property is to be the test of jurisdiction.