Present : Shaw J. and De Sampayo J. 1920.

CROOS *v.* VINCENT.

57—D. C. Negombo, 1,849.

Application by mother to be appointed guardian and curator—Should respondent be named ?—Mother guardian without authority from Court—Is she entitled to be curator at the same time ?

A mother is by law the natural guardian of her infant children, and is entitled to look after them and to have the custody of them as against all other people after the death of the father. It is unnecessary for a mother to apply to the Court for authority to be guardian.

The only thing necessary in her case is to obtain the management of the property of the infant children, and she is entitled to apply for this.

THE facts appear from the judgment.

Croos-Dabrera, for petitioner, appellant.—The practice has been not to make any party respondent to applications of this kind. The Code does not make it imperative that there should be a respondent to an application by way of summary procedure. There is no necessity to make a party respondent when the petitioner apprehends no opposition. There are cases where the Court has allowed applications by way of summary procedure without insisting on a party respondent being named. *Mohammado Umma v. Mohideen.*[2] The mother is the most competent person to be appointed guardian of her children. She cannot be deprived of this right because she applies to be appointed curatrix of their property. The limitation in section 587 of the Code applies only to cases where any fit person is appointed under the previous section. It is submitted that section 587 does not govern the whole chapter. Section 585 grants the Court authority to appoint a near relative both curator and guardian. This section imposes no limitation.

[1] *(1914) 17 N. L. R. 490.* [2] *(1892) 2 C. L. R. 163.*

1920.

Croos v. Vincent

[SHAW J.—Is not the mother the natural guardian of the children ?] Under the Roman-Dutch law it is the father who is the guardian. After his death the mother may have a preferential right to be appointed guardian. *Perera v. Appuhamy.*[1] She has to be appointed guardian by Court. *Lebbe v. Christie.*[2] The mother is not the natural guardian of her minor children.

[DE SAMPAYO J.—In both these cases the word "guardian" is used as including a curator, and the question involved was the guardian's right to deal with property.]

July 28, 1920. SHAW J.—

This is an *ex parte* appeal from an order of the District Judge refusing to appoint the appellant as curator and guardian of her infant children. The appellant is a widow. The Judge has refused the application : first, because there was no respondent named in the petition ; and secondly, as to the application to be appointed guardian on the ground that the mother being the heir of the children is not the proper person to safeguard the interest of the children in the property. With regard to the first point, it appears to be a general practice to name a respondent to the petition. Whether this is in fact necessary under the law I prefer not to express a definite opinion, but it is a practice which is an useful one, because it is well that there should be some other relative before the Court who might bring to the notice of the Court any objection to the application. The counsel appearing for the appellant has, however, withdrawn his objection to the Judge's order on this ground, because he is willing to name some person as a respondent to the petition. With regard to the application to be appointed as guardian, it appears to me to be unnecessary. The mother is by law the natural guardian of her infant children, and is entitled to look after them and to have the custody of them as against all other people after the death of the father. It is therefore unnecessary for the appellant to obtain the authority of the Court for that which she already is. The only thing necessary in her case is to obtain the management of the property of the infant children, and she is entitled to apply for this, and the Judge has not shut her out from applying for this if she names a party to the petition. The case will, therefore, go back to the District Court for the petition to be put in order, and for the Judge to consider the application.

DE SAMPAYO J.—I agree.

Sent back.

[1] *(1895) 1 N. L. R. 140.*

[2] *(1915) 18 N. L. R. 353.*