

Present : Fisher C.J. and Garvin J.

1928.

KEPPITIPOLA KUMARIHAMY v. RAMBUKPOTHA.

12—D. C. Kandy, 771.

Minor—Appointment of guardian and curator—Test of jurisdiction—  
Residence of minor—Ordinance No. 1 of 1889, s. 71.

The test of jurisdiction as regards the appointment by Court of a guardian or curator for a minor is the residence of the minor.

**A** PPEAL from an order of the District Judge of Kandy.

Navaratnam, for appellant.

H. V. Perera, for respondent.

February 21, 1928. FISHER C.J.—

We have to consider what is meant by the second paragraph of section 71 of the Courts Ordinance, No. 1 of 1889. The question of convenience does not arise. It is purely a question of construction. The paragraph in question reads as follows :—

Also in the like manner, and 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 first paragraph of the section relates to persons of unsound mind and provides that the test as to jurisdiction of a District Court both as to appointing guardians and curators of property is the residence of the person of unsound mind. It is contended by Mr. Navaratnam that the test of jurisdiction under the second paragraph is the residence of the minor as regards appointing a guardian and the situation of the property as regards appointing a curator.

In my opinion, if we gave effect to that contention we should fail to give effect to the words "Also in the like manner." It might have been better to put the words "within its district" after the words "minors and wards," but those words undoubtedly qualify "minors and wards." In my opinion on the true construction the test of jurisdiction in that paragraph, both as regards guardian and curator, is residence just as it is in the first paragraph. That construction gives effect to the words "Also in the like manner" and is, in my opinion, supported by the judgment in *In the Matter of M. O. D. Fernando, a minor*.<sup>1</sup> Section

<sup>1</sup> 2 N. L. R. 249.

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584 of the Civil Procedure Code may no doubt be cited to support the view which Mr. Navaratnam asks us to accept, but on the other hand the provisions of section 587 negative that view and is in favour of the view I have put forward.

In my opinion the decision of the learned Judge was right, and the appeal must be dismissed with costs.

GARVIN J.—I agree.

*Appeal dismissed.*

