APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

1904. *June 7.*

GOPILAL MANILAL, APPLICANT, *v.* AGARSINGJI RAISINGJI AND ANOTHER, OPPONENTS.*

Minor—Guardian ad litem—Nazir—Court's power to relieve.

There is nothing that compels the Court to retain as guardian *ad litem* of a minor one of its officers, where the circumstances of the case make it clear that the interests of the minor will be thereby imperilled. The Court has power to relieve the Nazir of his position as guardian when the Nazir has no funds for the purpose of conducting adequately the defence of the minor.

Narayandas Ramdas v. *Saheb Husein*(1) referred to.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of Chandulal Mathuradas, First Class Subordinate Judge of Ahmedabad.

The plaintiff Agarsingji Raisingji brought a suit in the Court of the First Class Subordinate Judge of Ahmedabad against his wife Bai Vaktuba and Ranjitsingji Agarsingji, a minor, for an injunction restraining both the defendants from asserting that the minor was his son, from establishing that the minor was his natural born son, and from claiming any maintenance as such son. In order to guard the interests of the minor, Gopilal Manilal, Nazir of the District Court of Ahmedabad, was appointed guardian *ad litem*. On the 31st August, 1903, the Nazir applied to the Court that the plaintiff should be directed to pay him two hundred rupees for the expenses of the suit on behalf of the minor. The Court having rejected that application, the Nazir, on the 1st September following, made another application stating that unless he was put in possession of funds he was not in a position to take care of the interests of the minor and that as the Court had rejected his application for such funds, he should be relieved of his position as guardian. This application was also rejected by the Court on the ground that it had no power to compel the plaintiff to give money, and that the Nazir being a Government officer, it had no power to cancel his appointment as guardian.

* Application No. 265 of 1903 under the extraordinary jurisdiction.

(1) (1888) 12 Bom. 553.

The Nazir preferred an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) urging, *inter alia*, that the minor being a ward of the Court, it was bound to make an order which would safeguard his interest. A *rule nisi* having been issued requiring the plaintiff to show cause why the order of the Subordinate Judge should not be set aside,

Krishnalal M. Jhaveri appeared for the applicant (Nazir) in support of the rule:—By the order of the Judge matters have come to an *im passe*. We are neither relieved of our position as guardian though we complained that we were unable to look after the minor's interests for want of funds, nor was any arrangement made to put us in funds. The plaintiff is a rich *tálukdár* and he can very well afford to pay to the minor the expenses for conducting his defence. The minor's mother had applied to be appointed as guardian *ad litem*, but as she is a married woman she cannot be appointed such guardian under section 457 of the Civil Procedure Code. The Nazir, when he is appointed a guardian by the Court, stands in the same position as any other guardian, not a Government servant, would. The fact that the Nazir is an officer of Government would not make any difference. Therefore where the Nazir prays to be relieved from his position as guardian we contend that there is nothing to prevent him from being so relieved.

Courts can, under certain circumstances, ask one of the parties to supply funds to a guardian: Simpson on Infants, p. 499, second edition.

The ruling in *Narayandas Ramdas* v. *Saheb Husein*[1] affords a guide under such circumstances. We submit that the minor being a ward of the Court every care should be taken to safeguard his interests.

There was no appearance for the opponents (plaintiff and defendant 1).

JENKINS, C. J.:—The Nazir of the District Court, Ahmedabad, who has been appointed guardian *ad litem* of the minor Ranjitsingji, the second defendant in this suit, has presented the

(1) (1888) 12 Bom. 533.

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present application to us under section 622 of the Code of Civil Procedure, praying that we would, in the exercise of our civil revisional powers, send for the papers in the case and reverse the order of the Subordinate Judge declining to remove the guardian.

The suit is one brought by a plaintiff against the minor and the minor's mother, questioning the legitimacy of the minor. A difficulty was found in procuring a next friend, and so the Nazir of the District Court was appointed apparently under the last clause of section 456 of the Code of Civil Procedure.

We will not now discuss whether it can with propriety be said that the Nazir of the District Court is an officer of the Court of the Subordinate Judge within the view of this section, but will, for the sake of argument, assume that to be the case.

The difficulty in which the Nazir finds himself, and which has led to the present application is, that he has no funds for the purpose of conducting adequately the defence of the minor. Accordingly, we are told, he made an application on the 31st August to have a certain sum paid him by the plaintiff in order that he might be able to take the necessary steps to safeguard the minor's interest, but that application failed. Then on the 1st of September, 1903, the Nazir again represented to the Court that unless he got money for expenses he could not take care of the interests of the minor in the suit, and he accordingly prayed the Judge to remove him from the place of guardian of the minor.

The Subordinate Judge dealt with this application by rejecting it on the ground that, as the Nazir had been appointed guardian by virtue of his holding a Government office, his appointment could not be cancelled, and that after he had been appointed he was bound to take care of the interests of the minor.

The Judge has, in our opinion, misappreciated the position. There is nothing that compels the Court to retain as guardian one of its officers, where the circumstances of the case make it clear that the interests of the minor will be thereby imperilled, and the Court has power to relieve an officer of a position such as that in which the Nazir here finds himself. This accords with common sense, and is supported by the decision of this

Court in *Narayandas Ramdas* v. *Saheb Husein*[1], where Sir Charles Sargent says that "the Court may well and indeed ought to refuse to go on with the suit if it should be of opinion that the Nazir has been unavoidably prevented from making himself acquainted with the case against the minor." Later on he says "the Court might well, under such special circumstances" (to which he then refers), "in the event of the plaintiff refusing to provide the means for enabling the Nazir to obtain the necessary information from the minor's relations, cancel the appointment of the Nazir."

Cancelment of the appointment of the Nazir would of course suspend the plaintiff's power to proceed with the suit against the minor.

The Subordinate Judge has clearly misconceived his powers when he considered that it was not within them to direct a cancelment of the appointment of the Nazir as guardian.

We were in hopes that the issue of this Rule would have had the effect of bringing the plaintiff by some proper representative or in person before this Court when we could have disposed of the matter. But he is not here and is not represented, so that we think the proper order will be to set aside the order of the Subordinate Judge and direct him to rehear this application.

In dealing with it he will bear in mind the remarks we have already made, and if he comes to the conclusion (as the facts stated before us most strongly suggest) that the interest of the minor may be seriously imperilled, if the Nazir is not put in funds, then it will be right for him to determine the appointment of the Nazir unless the plaintiff places in the hands of the Nazir a reasonable sum of money to enable the case of the infant to be adequately and efficiently placed before the Court.

The Subordinate Judge will, of course, have regard to the means of the plaintiff, who has been stated before us to be a man of considerable substance, quite capable of furnishing the funds which the Nazir now seeks.

We accordingly make the rule absolute and we direct that the plaintiff do bear the costs of this application.

Rule made absolute.

(1) (1888) 12 Bom. 553 at p. 555.