

Present: Mr. Justice Wood Renton.

1907.  
July 16.

NICHOLAS v. WALKER, SONS & CO.

*Ex parte* ERNEST RICHARD NICHOLAS, next friend of the  
minor plaintiff.

C. R., Colombo, 8,011.

*Minor—Action by next friend—Receipt by next friend of money due under  
decree—Inherent power of Court to order next friend to bring money  
into Court—Civil Procedure Code, s. 499.*

A minor becomes a ward of Court by being made a party to a suit; and the Court in which the action is instituted has power, in appropriate circumstances, apart from any provisions of the Code, to take such steps as it may deem necessary for the purpose of seeing that any money recovered by the next friend on behalf of the minor is actually applied for the minor's benefit.

**A** PPEAL by the next friend of the minor plaintiff from an order of the Commissioner (J. S. Drieberg, Esq.) directing him to bring into Court the money received by him from the defendants in satisfaction of the decree in favour of the minor. The facts are fully set out in the following order of the Commissioner (February 21, 1907).

“ This is an action by a next friend on behalf of a minor. Judgment was obtained for Rs. 295 and costs on 21st December, 1950. On 31st January defendant's proctor moved to draw the sum deposited by him in Court, as he had paid the plaintiff's claim and costs in full. On this the Court ordered that the money be paid into Court, as neither the next friend nor minor had authority to receive it. This order was made on February 8. On February 11, the plaintiff's proctor moved that satisfaction of decree may be entered in the case.

“ The plaintiff's proctor, Mr. A. C. Abeyewardene, showed cause yesterday against the order requiring the next friend to bring the money into Court. He stated that it had been judiciously expended for the benefit of the minor, whose receipt will be produced, and that he was prepared to satisfy the Court that the money had been expended as stated.

“ Mr. Abeyewardene contended that this Court had no authority to make the order in question; that there was no provision of law which gave this Court jurisdiction to prohibit a next friend from receiving the proceeds of a judgment, or when received, to require him to deposit it in Court; that a Court of Requests had not the authority given to District Courts in respect of minors (see

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clause 4, Ordinance No. 12 of 1895, and section 64 of the Courts Ordinance). Clearly Courts of Requests have no jurisdiction over the estates of minors as is possessed by District Courts. But this Court has, I think, an inherent right, and it is its obvious duty to see that the interests of minors are safeguarded, when what is due to them is recovered by an action instituted by a next friend. The necessity for such safeguarding is abundantly necessary.

"The Court does not seek to make an order *re* the estate of a minor, but only to safeguard money belonging to a minor recovered by a next friend through this Court by the money being deposited in Court pending minority, or to be drawn by the next friend, for the benefit of the minor, under necessary safeguards.

"Mr. Abeyewardene has referred to section 499 of the Civil Procedure Code, which provides for a next friend receiving money with leave of Court before decree or order, and contended that by implication it is therefore unnecessary to obtain leave of Court in respect of moneys received after decree. This contention, if upheld, will lead to the absurdity that the Court has power, during the pendency of an action, to safeguard moneys due or paid on it, but not as regards moneys paid or recovered after decree. At this stage the next friend is forced to appropriate it for his own use, as unfortunately too frequently happens.

"Mr. Abeyewardene also referred to section 461 of the Indian Civil Code, which is as follows: 'A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable on behalf of a minor—

' (a) By way of compromise before decree or order;

' (b) Under a decree or order in favour of a minor.'

"This section further provides for a next friend obtaining the leave of the Court to draw money, &c., of minors on giving security, &c.

"Mr. Abeyewardene contended that, as this section is not in our Code, it is clear that the whole law on the subject is contained in section 499 of our Code, and that section 461 was advisedly omitted from it. It is much to be regretted that 461 was not included in our Civil Code in place of section 499. I do not think it was deliberately or advisedly omitted, but rather that its omission is due to oversight. But, as I have already stated, this Court has an inherent right to protect the interests of a minor in a matter like the one in question.

"I desire to add that, in this instance, I have no reason to apprehend that the next friend, who is a professional gentleman, in whose integrity and honour the Court has full confidence, has not expended the money judiciously and exclusively for the benefit of his brother, whose interests in this action was zealously and faithfully guarded

by him. But I desire to press my order, as its legality has been challenged, and as I desire, equally with Mr. Abeyewardene, who has argued this matter with his usual straightforwardness and ability, to have an authoritative ruling on the point.

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“ There is abundant reason why the Court should have the authority to safeguard the interests of minors in action instituted by next friend.

“ I direct that the next friend do deposit in Court the amount paid to him, minus costs, within six weeks of this date.”

The next friend appealed.

*H. A. Jayewardene* (with him *A. St. V. Jayewardene*) for appellant.

*Cur. adv. vult.*

16th July, 1907. WOOD RENTON J.—

In my opinion this appeal should be allowed. I have no doubt that the learned Commissioner is right in holding that, in spite of the fact that section 499 of the Civil Procedure Code, unlike the corresponding section 461 in the Indian Code of Civil Procedure, places no prohibition in the way of a next friend receiving money which has been recovered by him in an action brought in the name of an infant, it is perfectly competent for any Court, through whose agency such money has been recovered, to take whatever steps it deems necessary for the purpose of seeing that the money is actually applied for the infant's benefit. In England an infant becomes a ward of Court by being made a party to a suit (*Gynn v. Gilbard*<sup>1</sup>), irrespective of the existence of any property subject to the control of the Court (*In re McGrath*<sup>2</sup>). I think that the principle affirmed in these decisions applies to the extent that I have just indicated, wherever the assistance of a Court of law is competently invoked in a minor's behalf. It appears to me, however, that the Commissioner of Requests, in the order which he has made in this case, has himself found facts which exclude the exercise of this inherent jurisdiction. For he expressly states that he has no reason to apprehend that the money recovered in the action brought against Messrs. Walker & Sons in the infant's name has not been properly applied for the infant's benefit, and the view is supported by the infant's receipt and the affidavit of the next friend. Under these circumstances I think that the order which the Commissioner has made requiring the next friend to pay the money into Court should, in the present case, be set aside, and I set it aside accordingly. As the appeal was *ex parte* there will be no costs.

*Appeal allowed.*

<sup>1</sup> (1860) 1 Dr. & Sm. 356.

<sup>2</sup> (1892) 2 Ch. 496.