

PARAMANATHER v. PARAMANATHER *et al.*1895.
April 1.*C. R., Chavakachcheri, 8,862.**Action against heirs of deceased debtor—Averments in plaint—Liability of heirs in possession—Suit against minor—How guardian ad litem is to be appointed.*

Where a creditor sues the heirs of a deceased debtor the plaintiff must show that the defendants possessed themselves of the estate of the debtor in such a way as to make them responsible for the claim to the extent of the assets in their possession.

If a minor is sued and he takes no steps to have a guardian *ad litem* appointed to represent him in the action, then it is for the plaintiff to procure the appointment of a guardian in order that he may be able to continue the action.

THE plaintiff averred in his plaint that one Verakutty owed him Rs. 20 on a promissory note; that Verakutty died leaving his sons, the defendants, as his only heirs; that the second defendant was a minor under the care and guardianship of his brother, the first defendant, who had no interest adverse to that of the first defendant; and prayed for judgment against the defendants as legal representatives of the estate of the deceased Verakutty. The defendants filed no answer. The Commissioner, however, was dissatisfied, at the *ex parte* hearing, with the evidence as to the execution of the note, and dismissed the plaintiff's claim.

The plaintiff appealed.

Senathirajah, for appellant.

1st April, 1895. WITHERS, J.—

I would have had some hesitation in affirming the judgment appealed from if there had been any one against whom it could have been executed.

The plaint, however, does not say that the defendants (or either of them) have possessed themselves of the estate of the maker of the promissory note in such a way as to make them responsible for the alleged claim to the extent of the assets which may have come into their possession.

Then the second defendant is not properly a party to this action.

1895.

April 1.

WITHERS, J.

If a minor *is sued* and he takes no steps to have a guardian *ad litem* appointed to represent him in the action, then it is for the plaintiff to procure the appointment of a guardian in order that he may be able to continue the action.

The procedure of appointing a next friend for a minor plaintiff and a guardian *ad litem* for a minor defendant has been confounded in this instance.

Affirmed.

