

1920.

Present : De Sampayo J.

NICHOLAS v. THOMAS APPU.

54—C. R. Negombo, 28,127.

*Minor running away with money—Action to recover money from minor—
Liability of minor.*

A minor (over twenty years of age) ran away with a sum of money entrusted to him. In an action to recover the money,—

Held, that minority was no defence, as the obligation arose out of a delict.

THE facts appear from the judgment.

Keuneman, for defendant, appellant.

E. W. Jayawardene, for plaintiff, respondent.

August 26, 1920. DE SAMPAYO J.—

There is no doubt about the plaintiff's right to the money he claims so far as the facts are concerned. The plaintiff, who had with him Rs. 300 in cash, handed the money to the defendant to hold it for him while he was having a bath. The defendant ran away with the money, and never returned it to the plaintiff. The plaintiff claims the money from the defendant in this action, and the Commissioner has given him judgment. It is contended for the defendant in appeal that the defendant is not liable as he was a minor at the time. His baptismal certificate shows that he was born on April 6, 1899, so that at the date of the occurrence, namely, on August 25, 1919, he was over twenty years of age. The plaintiff framed his action as upon a contract of deposit, but it is obvious that the circumstances also amount to the commission of a crime or delict, and I think it is not inequitable to treat the claim on that footing. The Roman-Dutch law recognizes the liability of a minor for delict. *Grotius* 3, 1, 26 says: "Municipal law considers all obligations incurred by minors as invalid, except through delicts, or in so far as they have been benefited." The Roman law, upon which this exception as to delicts is founded, regards a minor as liable for crimes and delicts even at the mere age of puberty. For *Dig. 50, 17, 111* states: "*pupillum, qui proximus pubertati sit, capax esse et furandi et injuriæ faciendæ.*" The minor must no doubt be represented in the action by a guardian, but the defendant is so represented in this action. *Vander Keeseel's Thes. 127*, on this point of procedure, to the effect that a minor cannot appear in Court without a guardian *etiam in delictis civilibus*, necessarily implies that minors may be made liable for delicts, provided they are properly sued. So far as I am aware, this has never been questioned in Ceylon. In *Walter Pereira's Institutes, p. 572*, the above passage

in Grotius is cited as an authority for the proposition that a minor's obligations are valid if incurred through delicts. See also C. R. Colombo, 90,949, *Gren. Rep. (1874), pt. II., p. 5.*

Judgment has, I think, been rightly given for the plaintiff, and this appeal is, therefore, dismissed, with costs.

Appeal dismissed.

1920.

DR. SAMPAYO
J.

*Nicholas
v. Thomas
Appu*