

# ORDER XXVII-A

## SUITS INVOLVING ANY SUBSTANTIAL QUESTION AS TO THE INTERPRETATION OF CONSTITUTIONAL LAW

1. **Notice to the Advocate-General.**--In any suit in which it appears to the Court that <sup>2</sup>[any substantial question as to the interpretation of constitutional law] is involved, the Court shall not proceed to determine the question until after notice has been given to the <sup>3</sup>[Attorney General for Pakistan] if the question of law concerns the Federal Government and to the Advocate-General of the Province if the question of law concerns a Provincial Government.

### COMMENTS

**Attorney General.** Under Rule 1, the Advocate-General of the Province or the Attorney-General of Pakistan has a right to intervene without impleading the Provincial or the Central Government as a party. Thereby, the Government does not become a party to the case. It is only under Rule 2 of the Order that the Government is to be added as a party, if necessary. [PLD 1967 Lah. 882].

2. **Court may add Government as party.**--The Court may at any stage of the proceedings order that the Federal Government or a Provincial Government shall be added as a defendant in any suit involving <sup>4</sup>[any substantial question as to the interpretation of constitutional law] if the <sup>5</sup>[Attorney General for Pakistan] or the Advocate General of the Province as the case may be, whether upon receipt of notice under Rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

1. Order XXVII-A ins. by the Code of Civil Procedure (Amendment) Act, 1942 (23 of 1942), S. 2.
2. Subs. in the cross-heading and Rule 11 by the P.O., 1961 (1 of 1961) Art. 2 and Sch. (w.e.f. the 23rd March 1956), for "any question as is referred to in sub-section (1) of S. 205 of the Govt. of India Act, 1935" which were subs. by the A.O. 1940, for "a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder".
3. Subs. *ibid* (w.e.f. 23.3.1956), for "Advocate-General of Pakistan" which were subs. by the A.O. 1949 for "Advocate-General of India".
4. Subs. in the cross-heading and Rule 11 by the P.O., 1961 (1 of 1961) Art. 2 and Sch. (w.e.f. the 23rd March 1956), for "any question as is referred to in sub-section (1) of S. 205 of the Govt. of India Act, 1935" which were subs. by the A.O. 1940, for "a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder".
5. Subs. *ibid* (w.e.f. 23.3.1956), for "Advocate-General of Pakistan" which were subs. by the A.O. 1949 for "Advocate-General of India".

**3. Costs when Government added as party.**--Where under R. 2 Government is added as a defendant in a suit, <sup>1</sup>[the Attorney-General,] the Advocate-General or the Government shall not be entitled to or liable for costs in the Court which ordered the addition unless the Court having regard to all the circumstances of the case for any special reason otherwise orders.

**4. Application for Orders to appeals.**--In the application of this Order to appeals the word "defendant" shall be held to include a respondent and the word "suit" an appeal.

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## ORDER XXVIII

### SUITS BY OR AGAINST MILITARY <sup>2</sup>[OR NAVAL] MEN <sup>3</sup>[OR AIRMEN]

1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorize any person to sue or defend for them.--(1) Where any officer, <sup>4</sup>[soldier, sailor or airman] actually <sup>5</sup>[in the service of the State] in <sup>3</sup>[such] capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, <sup>6</sup>[soldier, sailor or airman] in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, <sup>7</sup>[soldier, sailor or airman] is serving in military, [naval,] <sup>2</sup>[or air force] staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, <sup>8</sup>[soldier,

1. The words "the Attorney-General," ins. by the P.O., 1961 (1 of 1961), Art. 2 and Sch. (w.e.f. 23.3.1956).
2. Ins. by the Amending Act, 1934 (35 of 1934), Section 2 and Sch.
3. Ins. by the Repealing and Amending Act, 1927 (10 of 1927), Section 2 and First Sch.
4. The words "soldier or airman" were subs. *ibid.*, for the words "or soldier" and the word "sailor was ins. by Act, 35 of 1934, Section 2 and Sch.
5. Subs. by the P.O., 1961 (1 of 1961), Art. 2 and Sch. (w.e.f. 23.3.1936), for "serving under the Crown" which were subs. by the A.O., 1937, for "serving the Government".
6. The words "soldier or airman" were subs. *ibid.*, for the words "or soldier" and the word "sailor was ins. by Act, 35 of 1934, Section 2 and Sch.
7. The words "soldier or airman" were subs. *ibid.*, for the words "or soldier" and the word "sailor was ins. by Act, 35 of 1934, Section 2 and Sch.
8. The words "soldier or airman" were subs. *ibid.*, for the words "or soldier" and the word "sailor was ins. by Act, 35 of 1934, Section 2 and Sch.

sailor or airman) by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

**Explanation.** In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, <sup>1</sup>[ship,] detachment or depot to which the officer, <sup>2</sup>[soldier, sailor or airman] belongs.

**2. Person so authorized may act personally or appoint pleader.** Any person authorized by an officer, <sup>2</sup>[soldier, sailor or airman] to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, <sup>3</sup>[soldier, sailor or airman] could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, <sup>4</sup>[soldier, sailor or airman].

**3. Service on person so authorized, or on his pleader, to be good service.** Processes served upon any person authorized by an officer, <sup>2</sup>[soldier, sailor or airman] under Rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

## ORDER XXIX

### SUITS BY OR AGAINST CORPORATIONS

**1. Subscription and verification of pleading.**--In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

#### COMMENTS

**Suit by company.** If plaint was not competently filed, then such anomaly could be rectified subsequently. Suit would not become incompetent on account of subsequent filing of such copy. [PLJ 2010 Karachi 143 (DB)]

**Suit by or against corporation/company.** Registered Trade Union being a body corporate pleading in a case instituted by it can on principle of O. XXIX, R. 1 of the Code be signed and verified by any of its principal officers able to depose to the facts of the case. [1988 PLC 894].

1. Ins. by the Amending Act 1934 (35 of 1934), Section 2 and Sch.
2. The words "soldier or airman" were subs. *ibid.*, for the words "or soldier" and the word "sailor was ins. by Act, 35 of 1934, Section 2 and Sch.
3. The words "soldier or airman" were subs. *ibid.*, for the words "or soldier" and the word "sailor was ins. by Act, 35 of 1934, Section 2 and Sch.
4. The words "soldier or airman" were subs. *ibid.*, for the words "or soldier" and the word "sailor was ins. by Act, 35 of 1934, Section 2 and Sch.

Subscription and verification of pleading. Pleadings in legal proceedings initiated on behalf of juristic persons can be signed by any person, authorized to do so under association of the company or authorized by its board of directors through a resolution passed by a board or authorized to be so through a general power of attorney. [PLJ 2010 Lahore 164]

2. Service on corporation.--Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served--

- (a) on the secretary, or on any director, or other principal officer of the corporation, or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

3. Power to require personal attendance of officer of corporation.--The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

ORDER XXX

SUITS BTOR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

1. Suing of partners in name of firm.--(1) Any two or more persons claiming or being liable as partners and carrying on business in [Pakistan] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

1. Subs. by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960) S. 3 and Second Sch. (w.e.f. the 14th October, 1955), for "the Provinces and the Capital of the Federation" which were subs. by the A.O., 1949, for "British India".

High Court amendment. Punjab Note No. 2212-G of 12.5.1909-Add at the end:

\*Explanation. This rule applies to a joint Hindu family trading partnership.

N.-W.F.P. and Sindh. Same as in Lahore.

2. **Disclosure of partner's names.**--(1) Where a suit is instituted by partners in the name of their firm, the plaintiff's or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiff's or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

3. **Service.**--Where persons are sued as partners in the name of their firm, the summons shall be served either--

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within <sup>2</sup>[Pakistan] upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without <sup>3</sup>[Pakistan]:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the

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3. Subs. by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960) S. 3 and Second Sch. (w.e.f. the 14th October, 1955), for "the Provinces and the Capital of the Federation" which were subs. by the A.O., 1949, for "British India".

suit, the summons shall be served upon every person within Pakistan whom it is sought to make liable.

**4. Right of suit on death of partner.**--(1) Notwithstanding anything contained in Section 45 of the Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have--

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

**5. Notice in what capacity served.**--Where a summons is issued to a firm and is served in the manner provided by Rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

**6. Appearance of partners.**--Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

**7. No appearance except by partners.**--Where a summons is served in the manner provided by Rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

**8. Appearance under protest.**--Any person served with summons as a partner under Rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

**9. Suits between co-partners.**--This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and,

on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

**10. Suits against person carrying on business in name other than his own.**--Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

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**ORDER XXXI**

**SUITS BY OR AGAINST TRUSTEES, EXECUTORS  
AND ADMINISTRATORS**

**1. Representation of beneficiaries in suits concerning property vested in trustees, etc.**--In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

**COMMENTS**

Suit against trustees etc. Trustee not willing to join as a plaintiff can always be arrayed as defendant. [2003 CLD 1797].

**2. Joinder of trustees, executors and administrators.**--Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside <sup>1</sup>[Pakistan], need not be made parties.

**3. Husband of married executrix not to join.**--Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

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1. Subs. by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960) S. 3 and Second Sch. (w.e.f. the 14th October, 1955), for "the Provinces and the Capital of the Federation" which were subs. by the A.O., 1949, for "British India".

## ORDER XXXII

### SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

**1. Minor to sue by next friend.**--Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

High Court Amendments, Lahore. The following paragraph shall be added: "Such person may be ordered to pay any costs in the suit as if he were the plaintiff."

#### COMMENTS

**Suit by or against minor.** Being a minor is to be brought to notice of the Court by means of an application under R. 3. [PLJ 1980 Lah. 576; NLR 1980 SC 44]. Minor, even if incorrectly described will be considered a party to suit from the date of filing the plaint and not from date when arrangement for his proper representation made. [1980 CLC 1256]. Court should allow time to correct such omission or error even in appeal. [1988 CLC 768]. Minor is not bound by any proceedings against him where no guardian appointed and minor not represented properly. [1991 CLC 188].

**Object.** Object of the rules is to ensure due and proper representation on behalf of a minor defendant, if it affects the interest of the minor adversely, any departure from such rules would not be condoned by the Courts, but if no prejudice is caused to the minor, then the non-compliance of the rule would be inconsequential. [2003 YLR 945].

**2. Where suit is instituted without next friend, plaint to be taken off the file.**--(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

#### COMMENTS

**Object.** If the plaintiff becomes major before the Court decides the issue, there is no necessity to have a next friend for him he can affirm the previous proceedings and continue the suit. [1994 CLC 681]. Advantage in adopting procedure prescribed by O. XXXVII, C.P.C., is that defendant is not a matter of right entitled to appear or defend, but if he desires to be heard, he must apply to the Court for permission to appear and defend suit within 10 days of service of summons as envisaged by Art. 159 of Limitation Act, 1908. Till such time as leave to defend is granted, defendant cannot even file interlocutory application in order to agitate the point of jurisdiction not to question the transaction between the parties or the challenge validity and legal effect of promissory note and issues can be decided at the trial after recording evidence after leave to defend is granted. [PLD 2007 Kar. 182].



3. Guardian for the suit to be appointed by Court for minor defendant.--(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by the minor where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.]

High Court Amendments, Lahore. The following sub-rule were substituted for sub-rules (3) and (4).

"(3) The plaintiff shall file with his plaint a list of relatives of the minor and other persons with their address; who *prima facie* are most likely to be capable of acting as guardian for the suit for a minor defendant. The list shall constitute an application by the plaintiff under sub-rule (2) above.

(4) The Court may, at any time after institution of the suit, call upon the plaintiff to furnish such a list, and, in default of compliance, may reject the plaint."

The following sub-rules (6) and (7) be added:

"(6) Any application for the appointment of a guardian for the suit and any list furnished under this rule shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor, and that each person proposed is a fit person to be so appointed.

(7) No order shall be made on any application under this rule, except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is and after hearing any objection which maybe urged on behalf of any person served with notice under this sub-rule: Provided that the Court may, if it sees fit, issue notice to the minor also."

### COMMENTS

**Compromise made by guardian ad litem (real mother of the minor).** No allegation made or evidence led to show that the guardian had acted fraudulently in the matter. Petitioner not challenging the decree and the proceedings for 10 years after the event and had sold away the house and received the money paid in Court by the purchaser. Plea of the petitioner that she was minor at the time of compromise and no leave of the Court was obtained in terms of O. XXXII, R. 7, not tenable when no *mala fide* or ill-will shown against the guardian who was the real mother of the minor. [2003 CLC 1792]. Minor owning having filed appeal through the attorney, cannot challenge the authority of the attorney as the real father of the minor was his natural guardian and the memo. of appeal was not even signed by the minor himself. [2003 SCMR 1199].

**Mother not the natural guardian but de facto guardian.** Mother of the minor daughter was not the natural guardian to deal with the property of her minor daughter under Islamic law, at the most, she was de facto guardian of property of her daughter. Exchange mutation, in circumstances, showing exchange of suit-land between the mother and her minor daughter was illegal. [PLD 2009 S.C. 751].

**4. Who may act as next friend or be appointed guardian for the suit.**--(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as next friend of the minor or be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardians, and may direct that the costs to be incurred by such

officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give direction for the repayment or allowance of such costs as justice and the circumstances of the case require.

High Court Amendments, Lahore. Add sub-rule (2):

(2) Where a minor defendant has no guardian appointed or declared by competent authority, the Court may, subject to the proviso to sub-rule (1), appoint as his guardian for the suit a relative of the minor.

If no proper person be available, who is a relative of the minor, the Court shall appoint one of the other defendants, if any, and, failing such other defendant, shall ordinarily proceed under sub-rule (4) of this rule to appoint one of its officers or a pleader.

(ii) The following words be added to sub-rule (3). The Court may presume such consent to have been given, unless it is expressly refused."

(iii) In sub-rule (4) after the word "officers" add "or a pleader", and for the word "officer" substitute the word "person".

**5. Representation of minor by next friend or guardian for the suit.**--(1) Every application to the Court on behalf of a minor, other than an application under Rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

**6. Receipt by next friend or guardian for the suit of property under decree for minor.**--(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either--

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the

7. **Agreement or compromise by next friend or guardian for the suit.**--(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly, recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

High Court Amendments, Sindh. Add the following as sub-rule (1A) after sub-rule (1):

(1A) Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other action on behalf a minor or other person under disability, and such minor or other person under disability is represented by a Counsel (Advocate) or Pleader, the Counsel (Advocate) or Pleader shall file in Court with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor or other person under disability. A decree or order for the compromise of a suit, appeal or matter to which a minor or other person under disability is a party, shall recite the sanction of the Court thereto and shall set out the terms of the compromise in Form No. 24 in Appendix D to this Schedule."

### COMMENTS

**"Agreement or compromise".** Compromise by guardian *ad litem* recorded without leave of Court is not absolute nullity but same will not be binding on the minor who has option either to affirm and ratify or avoid. Minor upon attaining majority can challenge the decree passed on such compromise. [PLJ 2003 Lah. 1420]

**Agreement or compromise by next friend.** Restrictions are imposed on powers of next friend or guardian of minor, to enter into agreement or compromise on behalf of minor, without leave of the Court which must be recorded expressly. Purpose is to protect minor's interest. [PLJ 1999 Lah. 969].

8. **Retirement of next friend.**--(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

9. **Removal of next friend.**--(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the