

name of the infant by her guardian, or by a person applying by the same petition to be appointed guardian as thereafter provided. If there be any conflict in these provisions, the later enactment, the statute, prevails. The mother of the infant is one of her guardians appointed by the Surrogate Court, according to the affidavits filed; but she is not a party to the application in any way: and no explanation of her absence and silence is given.

Under the Rules, the consent of the infant, if of the age of fourteen years or upwards, to the application, is necessary, "unless the Court otherwise directs or allows."

Con. Rule 965 requires that the infant shall be produced before the Judge, or a Master, unless otherwise directed by the Judge.

Con. Rule 966 provides that, if the infant be above the age of fourteen years, he or she "shall be examined apart, by the Judge or officer before whom" he or she "is produced, upon the matter of the petition and as to" his or her "consent thereto."

There is no reason why the infant cannot very well attend before the Judge as the Rules provide; and there would be no excuse, that I can imagine, in this case, for dispensing with any part of the procedure so provided for. The wishes of the infant may have much weight; and in any case there ought to be an opportunity given to express them; none but weighty reasons should ever prevent, or indeed excuse, it.

Then, under Con. Rule 968, "the witnesses to verify the petition shall be examined viva voce before the Judge making the order, or before a Master of the Supreme Court, as to the matter of the petition, and the depositions so taken shall be stated to have been taken under this Rule." This, as I have intimated, has not been done, and is sought to be avoided.

The applicants must conform to the Rules in these respects; I know of no authority for absolving them; and, if there were, there is no good reason why there should be absolution in this case.

The application must stand over until the next sitting of the Court—London Weekly Court—and then the application must be proceeded with, in all respects, in conformity with the practice I have pointed out.