1958 *Present :* **Gunasekara, J., and Sansoni, J.**

M. NAGARATNAM *et al.*, Appellants, *and* **F. T. JOHN**, Respondent.

S. C. 406—D. C. Jaffna, 388/L

Donation—Minor—Gift made by father to his minor child—Acceptance by donees' maternal grandfather—Validity.

R gifted certain immovable property in 1916 to his daughter the 2nd plaintiff. The 2nd plaintiff's mother had died before the deed was executed and R had married again in 1915. As the donee was a minor the donation was accepted on her behalf by her maternal grandfather.

Held, that the acceptance of the gift was valid for the reasons that (1) the grandfather was a proper person to accept the donation on the minor's behalf, and (2) the donor had allowed the acceptance to be made by the grandfather on behalf of his minor child.

APPEAL from a judgment of the District Court, Jaffna.

K. Sivagurunathan, with *C. Chellappah*, for the 1st and 2nd Plaintiffs-Appellants.

No appearance for the Defendant-Respondent.

Cur. adv. vult.

June 23, 1958. SANSONI, J.—

This appeal raises the vexed question as to what constitutes proper acceptance of a donation to a minor.

The land in dispute belonged to one Rogers who by deed P1 of 1916 gifted it to his daughter the 2nd plaintiff. The 2nd plaintiff's mother had died before the deed was executed and Rogers had married again in 1915. As the donee was only five years old at the time and was living in Malaya she could not obviously accept the gift herself. As appears on the face of the deed, the donation was accepted on her behalf by her maternal grandfather.

The defendant claimed title to the land by purchase at a sale held by the Fiscal in 1930 in execution of a decree entered against Rogers. He also claimed the land by prescription, but this claim cannot be sustained if the 2nd plaintiff obtained title upon the deed P1, because she has been absent from the Island since 1915.

The case therefore turns on whether Rogers had divested himself of title by executing the deed P1, and this again depends on whether the acceptance of the gift by the 2nd plaintiff's maternal grandfather was a valid acceptance.

The learned District Judge held, relying upon a decision of the Privy Council in *Nagalingam v. Thanabalasingham* [1], that there cannot be a valid acceptance of a gift on behalf of a minor donee unless such acceptance is by a natural guardian or by a person who has been appointed by lawful authority to act for the minor. Taking the view that the 2nd plaintiff's grandfather was neither, he held that the gift was invalid and dismissed the plaintiff's action. The plaintiffs have appealed and it was urged by their Counsel that acceptance by the maternal grandfather was sufficient to make the gift valid.

The particular passage in the judgment of the Privy Council upon which the learned Judge relied for his decision reads:

"Their Lordships see no reason for doubting the correctness of the decision of the District Judge that the maternal uncle's acceptance of the gift on behalf of the minor was not a valid acceptance according

[1] *(1952) 54 N.L.R. 121.*

to the law of Ceylon. The finding is supported by authority. In addition to the case of *Silva v. Silva* on which the District Judge relied, there are two other decisions of the Supreme Court to the same effect, namely *Avichchi Chetty v. Fonseka* [1] and *Cornelis v. Dharmawardene* [2]. A maternal uncle is not a natural guardian ; in the strict sense he is not even a member of the same family. Without appointment by lawful authority Kanthar Sinnathamby could not act for Kanthavanam and it is not suggested that such appointment existed. Therefore acceptance could only spring from Kanthavanam himself, if there was in fact acceptance."

There is authority for the proposition that a grandfather is a natural guardian of a minor. In *Silva v. Silva* [3] Grenier A.J. said : "According to the Roman-Dutch Law, the mother and father stood in the relationship of natural guardians, as also the grandfather and grandmother. I do not know of any case, nor has any been cited to us, in which an uncle was regarded in the light of a legal or conventional guardian. See *Avichchi Chetty v. Fonseka* [1] and *Cornelis v. Dharmawardene* [2] and the cases therein cited." The learned Judge quotes no authority, but perhaps he had in mind the following statement in Walter Pereira's Laws of Ceylon (1913 Edition) at page 194 : "Father and mother, grandfather and grandmother, if competent, are preferred to all others in the guardianship of their children and grandchildren ". As the father was the donor in this case he could not accept the donation : the mother was dead : the grandfather was therefore a proper person to accept the donation on the minor's behalf—see *Francisco v. Costa* [4]. I would therefore hold that the donation to the 2nd plaintiff was a valid one.

But there is a further reason why the acceptance in this case should be considered to be good, and it is that the donor had allowed the acceptance to be made by the grandfather on behalf of his minor child. The recent Privy Council decision in *Abeyawardene v. West* [5] leaves no doubt on this point, for it was held there that acceptance by two brothers and a brother-in-law of a donation made by the parents of a minor donee is good. Lord Keith of Avonholm said in that case : "In similar circumstances acceptance on behalf of a minor donee by his grandmother (who was the other donee) was held good in *Francisco v. Costa and Others* [4] as was also acceptance by a brother on behalf of his minor brother in *Lewishamy v. De Silva* [6]. One of the grounds of judgment in these cases was that the donors had allowed such acceptances to be made on behalf of their minor children."

The learned District Judge followed the reasoning in my judgment in *Packirmuhaiyadeen v. Asiaumma* [7] where I held that a minor donee's elder brother could not accept a donation on the minor's behalf even where the donor was the father of the minor, but this judgment can no longer be considered correct. My decision was based on the view that

[1] *(1905) 3 A.C.R. 4.*
[2] *(1907) 2 A.C.R. Supp. XIII.*
[3] *(1908) 11 N.L.R. 161.*
[4] *(1889) 8 S.C.C. 189.*
[5] *(1957) 58 N.L.R. 313.*
[6] *(1906) 3 Balasingham*
[7] *(1956) 57 N.L.R. 449.*

an elder brother is not a natural guardian of his minor brother, and the mere fact that the father allowed him to accept a donation on behalf of his minor brother would not make the acceptance valid. I thought that the decision in *Nagalingam v. Thanabalasingham* [1] justified such a conclusion, since in that case the parents (who were the donors) seemed to have allowed the maternal uncle of their minor child (who was the donee) to accept the donation on the child's behalf. The Privy Council decided that since the maternal uncle was neither a natural guardian nor appointed by lawful authority he could not accept the donation. I ought to add that there is no reference in the judgment—I have already quoted the relevant passage—to the circumstance that the parents allowed the minor's uncle to accept the donation. However, it is now clear from *Abeyawardene v. West* [2] that in the case of a donation made by parents, acceptance of the donation by the brother-in-law and the brothers of the minor donee is good, for the reason that the donors have allowed such acceptance to be made on behalf of the minor child.

I would set aside the judgment appealed against and give judgment for the plaintiffs as prayed for with costs in both Courts, save that there will be no damages as there was no issue of damages raised at the trial nor have damages been proved.

GUNASEKARA, J.—I agree.

Appeal allowed.