1971 *Present :* **H. N. G. Fernando, C.J., and Alles, J.**

V. CHELLIAH, Appellant, *and* A. SIVASAMBOO and 5 others, Respondents

S. C. 541/65 (F)—D. C. Jaffna, 946/L

(i) *Co-owners—Owner of separate allotments forming one land—Donation of the entire land to a group of persons—Donees then become co-owners in equal shares.*

(ii) *Evidence—Estoppel by deed—Inapplicability in Ceylon—Estoppel by representation—Rules applicable to it.*

(iii) *Donation—Gift made by donor to his two sons and grandson who were minors—Acceptance by step-mother of two of the donees and of the deceased mother of the third donee—Validity of the acceptance.*

(i) Where the owner of different contiguous allotments of land forming together one piece of land donates all the allotments as one entity to two or more persons, the legal effect is to constitute the donees co-owners of the entire piece of land, each donee being entitled to an equal share of the piece of land.

(ii) A had executed in March 1958 a mortgage of the entirety of a land in favour of B. In fact B was at that time entitled to one-third share of the land. In the present action the plaintiff, who was A's successor in title, sought declaration of title to the whole land, and the 4th defendant, who was B's successor in title, asserted title to a one-third share. Relying on the acceptance by B of the mortgage by A of the entirety of the land, the plaintiff raised at the trial the issue whether the 4th defendant was estopped from denying the plaintiff's title to the whole land.

Held, (*a*) that the English Law of Estoppel by Deed does not apply in Ceylon. The plaintiff could not therefore claim that the mortgage bond by itself established that B had no title to one-third share of the land.

(*b*) that even if the English Law could be applied, the present action was not on the Deed itself, for the plaintiff was not seeking to enforce any obligation of B or of his privy the 4th defendant which arose under the mortgage.

(*c*) that the evidence in the present case was not sufficient to create an Estoppel by representation, because (1) the acceptance by B of the mortgage of the entirety of the land did not constitute a "precise and unambiguous representation" that B was not entitled to one-third share and (2) the plaintiff did not rely upon that representation when he purchased the land from A.

(iii) A donor gifted certain immovable property to three persons, namely his two sons and his grandson, who was the son of his deceased daughter. The three donees were all minors at the time, and the donor allowed his second wife to accept the donation on behalf of the donees. The acceptor was the step-mother of two of the donees and also of the deceased mother of the other donee. According to the terms of the deed the acceptor and the donees were entitled to be in possession of the property and enjoy the income and produce. When the donees attained majority they ratified the acceptance on their behalf by dealing with the property, reciting the deed of gift as their source of title.

The trial Judge held that there was no valid acceptance of the deed of donation on the ground that the donor's second wife was neither the legal nor the natural guardian of the minor donees and therefore could not accept on their behalf.

Held, that the acceptance by the donor's second wife on behalf of the minor donees was valid.

Abeyawardene v. West (58 N. L. R. 313) and *Nagaratnam v. John* (60 N. L. R. 113) followed.

APPEAL from a judgment of the District Court, Jaffna.

C. Ranganathan Q.C., with *S. Sharvananda*, *P. Thuraiappah* and *M. Sivarajasingham*, for the 4th defendant-appellant.

C. Thiagalingam, Q.C., with *K. Kanag-Iswaran*, for the plaintiff-respondent.

Cur. adv. vult.

September 22, 1971. H. N. G. FERNANDO, C.J.—

The plaintiff in this action sued for a declaration of title to an allotment of land in extent 5 and 3/4 lachams. The basis of his claim was that this allotment had by a Deed P3 of 1924 been conveyed to one Suppiah, and that, on the death in 1933 of Suppiah, his son Nagalingam became entitled to the allotment by virtue of provision to that effect in the Deed P3 of 1924. In August 1958, Nagalingam sold the allotment by a Deed P5 to certain purchasers, reserving to himself the right to obtain a re-conveyance on payment to the purchasers of a specified sum of money and interest within a period of two years. In November 1958, Nagalingam by P6 sold to the plaintiff the right to a re-conveyance which had been reserved by P5, and in June 1959 the plaintiff obtained (P8) a transfer of the allotment by the exercise of the right to obtain a re-conveyance.

The grounds on which this claim of the plaintiff was resisted, and the reasons why the plaintiff succeeded in his action in the District Court, can be understood only after reference to several facts and transactions.

Suppiah (the transferee on P3) had purchased five contiguous allotments of land upon a series of deeds between the years 1921 and 1931. Not all of the Deeds were produced at the trial, but it appears that in each of them the conveyance by the vendor was to Suppiah and after him to one or other of his three children. For example, Suppiah purchased the particular allotment in extent 5 and 3/4 lachams (which is the subject of the present dispute) by the Deed P3 of 1924, which was a conveyance to Suppiah "and after him to his son Nagalingam". The learned District Judge has however held that despite the language of these conveyances, Suppiah

was in law entitled to dispose of the allotments which he acquired on the series of Deeds, and that if he did so dispose of any allotment, then the child of Suppiah named in the relevant Deed would have no claim of title under that deed. This is perhaps the only finding of the trial Judge which neither Counsel has canvassed during the argument of this appeal, and I am thankful for even that small mercy.

Shortly before Suppiah's death, he executed a Deed of donation which has been marked in the District Court as the document 4D3 of 1933. In this Deed, Suppiah recited his title to the five contiguous allotments of land which he had acquired under the series of Deeds to which I have referred, and he conveyed all the allotments to three persons, namely his son Nagalingam, his son Kadiramalai and his grand-son Eliatamby, who was the son of his deceased daughter.

As I have already stated, the validity of Suppiah's donation 4D3 was fortunately not challenged in appeal on the ground that Suppiah had no power to dispose of these lands by that donation. But the three donees were all minors at the time, and the donation was accepted on their behalf by the second wife of the donor, who was the step-mother of two of the donees and also of the mother of the other donee. The learned District Judge held that there was not a valid acceptance of the Deed 4D3.

Counsel for the 4th defendant in this appeal has argued upon the authority of the judgment of the Privy Council in *Abeyawardene v. West*[1] (58 N. L. R. p. 313), that in the case of a donation by a parent to his minor children, there is a valid acceptance if the donor allows some person chosen by him to accept the donation on behalf of the minors.

This matter has been fully dealt with in the accompanying judgment of my brother Alles with which I am in entire agreement.

Since (as I hold) the donation 4D3 was validly accepted for the donees, the legal title to the five contiguous allotments of land vested in 1933 in terms of that Deed.

The Deed of donation purported to create a trust, and described the three donees as " trustees ". But in the present action the Deed has been regarded without dispute as one intended to convey title to the subject-matter of the donation to the three named donees. The question whether these donees became liable to hold the subject-matter in trust therefore did not arise for consideration. The subject-matter of the donation is described in the recitals and also in the schedule to the Deed as follows :—

" The piece of land situated at Vannarponnai West in the Parish of Vannarponnai in the Division and District of Jaffna, Northern Province, called Parayady Mullaikaddaiyady and Pannikodduvalavoo comprised of five lots of 4 lms V. C. and 9 kls 5 lms V. C. and 11 kls 2 lms V.C. and 5 lms V. C. and 13½ kls and 4 lms V. C. and 3½ kls forming a total extent of 22 lms V. C. and 3/4 kly ".

[1] *(1957) 58 N. L. R. 313.*

It is thus perfectly clear that, although the donor Suppiah had become the owner of five different allotments of land, he conveyed by 4D3, not those allotments as separate entities, but the piece of land comprising all the allotments as one entity. Thus the legal effect of the donation was to constitute the three donees co-owners of the entire piece of land of 22 lms. and 3/4 kulies, each donee being obviously entitled to a 1/3 share of the piece of land. This view of the matter is amply confirmed by the provision in clause 5 of the Deed of donation :

> " 5. The said trustees shall be entitled to live in the said land and enjoy the produce and take the income in equal shares and such income should be deposited with the Firm of N. Suppiah and Sons before the said income is divided among the said trustees."

There was no neutral evidence at the trial as to the actual mode of possession of the entire land of 22 lms. and 3/4 kulies during the years between 1933 and 1951. But there was nothing to counter the assumption which arises from the terms of 4D3 that the three donees were regarded by each other during those many years as being co-owners of the entire piece of land. This assumption is confirmed by the first dealings proved in this case to have been transacted by the donees.

In 1951, the three donees joined in the execution of a lease (4D12) of a very small portion of land of 22 lms. They recited that the lease was for a divided extent 55 ft. by 32 ft. out of the piece of land comprising five lots and forming a total extent of 22 lms. and 3/4 kulies. Although this lease did not refer to any deeds, the reference to " the piece of land " echoes the description in the Deed of Donation. Moreover, the absence of any reference to the Deed by which Suppiah acquired title to the particular allotment of which the leased portion is a part indicates that that allotment was not regarded as a separate entity.

Again, in 1955, two leases were executed in favour of the 4th defendant. The subject of these leases was in each case the same, and because of certain arguments adduced it is necessary to set out here the description of the subject of these two leases :

> " Out of all that piece of land called Parayady Mullaikaddiyandy and Pantrikodduvalavu comprised of five lots 4 lms V. C. and 9 kls 5 lms V. C. and 11 kls 2 lms V. C. 5 lms V. C. and 13½ kls and 4 lms V. C. and 3¼ kls aggregating to 22 lms V. C. and ¾ kly with house kitchen two wells garage boutique buildings office room and tenements exclusive of shrine room and living rooms and situated at Vannarponnai West .....the land and premises shop rooms with the back gate way compound plantations wells and other appurtenances belonging thereto bearing assessment Nos. 343, 345, 347 and 349 excluding tenements Nos. 359/5, 359/4, 359/3, 359/2, 155, 337, 341, 341/1, 339 and portion described in lease No. 1621 dated 6.9.1951 attested by N. M. Sultan N. P."

The lease of 1955 to the 4th defendant, to which reference has just been made, was executed by two instruments. The first (4D9) was executed on 3rd October 1955 by two of the donees named in the donation 4D3 of 1933, and the second (4D10) was executed separately by the third of the donees. There has been no explanation for the fact that the lease was not, as in case of the lease of 1951, granted by one instrument instead of two. But both instruments contained the identical recital that the three persons named in the deed of donation 4D3 were thereunder entitled to the " piece of land " described in the schedule to the leases.

I must point out at this stage that neither the pleadings in this case, nor the issues framed at the trial, nor any argument of Counsel, included any suggestion that any one of the three donees was a minor when the leases of 1951 and 1955 were executed. Since they were all alive in 1933 when the Deed of donation 4D3 was executed in their favour, it is manifest that they had attained their majority before 1955. Indeed, the only evidence has been that Nagalingam attained his majority in 1944, and there was no evidence that either of the two other donees had been a minor during the 10 years preceding the year 1955, when they executed the leases 4D9 and 4D10.

The plaintiff filed this action against 4 defendants. The 1st defendant is Kadiramalai, the son of Suppiah, and one of the donees named in the Deed of Donation 4D3 of 1933. The 2nd defendant is also one of the donees named in that Deed, namely Eliatamby the grandson of the donor Suppiah. The 3rd named defendant is the other donee Nagalingam under whom the plaintiff claims title to the allotment of 5¾ lachams upon Nagalingam's dispositions P5 and P6. The 4th defendant named in the plaintiff's action is the person in whose favour the two leases of 1955 (4D9 and 4D10) were executed.

The 1st, 2nd and 4th defendants filed a joint answer ; the substantial position taken in their answer and at the trial is that by virtue of the Deed of Donation of 1933 (4D3), the three donees named in that Deed, i.e., the 1st, 2nd and 3rd defendants, each became entitled to a 1/3 share of the allotment of 5¾ lms specified in the plaint, and that the plaintiff as the successor in title of the 3rd defendant Nagalingam is entitled only to a 1/3 share of that allotment. The 4th defendant subsequently filed a separate answer, and Counsel who appeared for him at the trial framed *inter alia* an issue which set up the title of the 4th defendant to a 1/3 share of the allotment claimed by the plaintiff. The 4th defendant relied upon a Deed P17 of 14th March 1959, by which the 2nd defendant had conveyed a 1/3 share of this allotment to the 4th defendant.

The plaintiff relied on the Deed P3 of 1924, and claimed that by virtue of that Deed the title to this allotment had vested in the 3rd defendant Nagalingam, the son of Suppiah, and that Nagalingam's title had vested in the plaintiff by the Deeds P5, P6 and P8. The contention for the 4th defendant was that the Deed P3 of 1924 ceased to be effective when

Suppiah, in exercise of his right to dispose of this allotment, executed the Deed of donation 4D3 of 1933 gifting this and the other four allotments jointly to the 1st, 2nd and 3rd defendants, and as already stated the learned trial Judge agreed that Suppiah did have the right to make that gift. But despite earlier arguments to the contrary, Counsel for the 4th defendant in appeal ultimately conceded that the Deed of Donation 4D3 had not been duly registered ; accordingly the deeds on which the plaintiff has relied have priority over 4D3 and over the deed P17, upon which the 4th defendant claims title to a 1/3 share of this land.

There is thus no doubt that the plaintiff's claim of title upon the deeds mentioned in the preceding paragraph of this judgment must prevail over the 4th defendant's claim of title under the Deed P17.

But there remains the question whether the facts of this case establish that the three donees named in the Deed of Donation 4D3 had each acquired a title by prescriptive possession to a 1/3 share of this allotment and of all the other four allotments dealt with in 1933 by the Deed of Donation 4D3. I have already mentioned the uncontested conclusion of the District Judge that Suppiah had in law the right to dispose of all the allotments, and my own opinion that in fact the entirety had been possessed in common from 1933 until 1955 in accordance with Suppiah's Deed of Donation. Thus the 4th defendant can rely on the Prescription Ordinance and on the possession of his vendor the 2nd defendant for a long period as a co-owner to rebut the plaintiff's claim of title to this particular allotment.

In regard to this question of prescription, issue No. 21 posed the question whether " the 4th defendant acquired prescriptive title to a 1/3 share of this allotment", and issue No. 22 posed the similar question whether the 1st defendant had a prescriptive title to a 1/3 share. These issues were both answered in the negative by the learned trial Judge. In dealing with the question raised in issue No. 21, the learned Judge made the following observations :—

> " The next question for consideration is whether the 4th defendant is entitled to the interests he claims on P17 by prescriptive title. The 4th defendant has not called Kumarasamy Eliyathamby the vendor to him of interests in the subject matter of this action on the Deed P17, and of the otty mortgage and lease on 4D9, to speak to the possession of interests sold to him by Eliyatamby. The 4th defendant has also not called Kathiragamathamby who otty mortgaged and leased to him interests on the Deed 4D10. According to the plaintiff the 4th defendant obstructed him only in 1959 after the execution of P8 when he went to put up a fence on the eastern portion of lot 1. The plan 4D8 made in 1962 for the partition action shows that there were live fences on the Northern, Western, Southern and a portion of the Eastern boundary of the subject matter of this action. The execution of bonds P10 of 1958 and the subsequent bonds referred to earlier, and the

seizure report P9, show that not only did the deceased 3rd defendant deal with the subject matter of this action as a distinct and separate land but this position was accepted by Eliyathamby who transferred to the 4th defendant a 1/3 share of subject matter of this action on P17. The evidence of the 4th defendant on the question of prescription is unconvincing. It is more probable that the 3rd defendant the predecessor in title of the plaintiff had been in possession of the subject matter of this action from 1933, after the death of his father Nagalingam Suppiah, and had prescribed to it and the plaintiff is entitled to the benefit of the prescriptive possession of the deceased 3rd defendant."

The only evidence of the plaintiff during his examination in chief on the question of possession is contained in the following passage :—

Q. When did you first come to know that the 4th defendant Chelliah was claiming a share of your land ?

A. When I went to fence the land in 1959.

Q. That is to say after you obtained a decree against Pasupathypillai and wife Packialedchumy and transfer from them you went into possession ?

A. Yes.

Q. To your knowledge was the 3rd defendant possessing this land and taking rents from the shops ?

A. Yes.

Q. Till he died pending this action ?

A. Yes.

But that evidence is very nearly demonstrated to be false by the admissions which the plaintiff made when cross-examined :—

" I knew the 5¾ lms before 1958.

Q. There was no boundary fence then ?

A. Because they were using the whole land as one land there was no fence.

Q. " They " means who ? Who were using it ?

A. Chelliah and his people. That is the 4th defendant and his people.

Q. They were using the land for how long ?

A. For 15 years.

Q. And then you tried to get the surveyor to put up a fence separating the 5¾ lms from the eastern portion ?

A. I asked Nagalingam to separate my portion of the land.

Q. When the surveyor started to plant sticks the 4th defendant objected to it and prevented him from doing it ?

A. When I went to plant the sticks only the 4th defendant tried to object to it. "

The 4th defendant's evidence was that he had for a long period been in possession of much of the extent of 22 lms. referred to in the Deed of Donation, including of course the allotment of 5¾ lachams now in dispute. Although he did not explain how he had been thus in possession even before the leases of 1955 in his favour, the admission of the plaintiff in cross-examination that the 4th defendant had been in possession for 15 years, renders it highly probable that the 4th defendant had possessed earlier under some informal arrangement.

With respect I must say that the trial Judge does not appear to have considered the available evidence as to the actual possession of this allotment, and that he ignored altogether the fact that the Deed of Donation 4D3 was actually acted upon by the three donees when they executed leases in 1951 and 1955, and that the two leases recited as the lessors' source of title only the Deed of Donation by which Suppiah had conveyed "a piece of land comprised of five lots" to the lessors.

The opinion of the trial Judge that the 3rd defendant Nagalingam had probably possessed this allotment from 1933, after the death of his father Suppiah, and had prescribed to it, was in the teeth of the sole evidence as to actual possession which was given by the 4th defendant and supported by the plaintiff's admission. That opinion also ignored the important fact that Nagalingam was only about 10 years old when his father died—a fact which renders absurd the possibility that Nagalingam possessed this allotment adversely to his (minor) co-donees. The strong inference of possession in common which arose from the leases of 1951 and 1955 was also discounted by the trial Judge by his finding that the leases of 1955 "do not deal with the subject matter of this action, but with premises outside it".

This finding was based on certain transactions by the 2nd and 3rd defendants in 1958 and 1959, to which I shall have to refer in a different connection. But the claim of the 4th defendant, that this allotment was included in the subject of the leases, depended on the leases themselves and on his evidence of possession under the leases and during an earlier period. I have already set out the description contained in the leases 4D9 and 4D10 of the subject of the leases. That description excluded certain "tenements" bearing specified numbers. This word "tenement" is ordinarily used in Ceylon to describe the units of a building (usually single-storeyed) consisting of several such units, each unit comprising only one or a few small rooms occupied as a dwelling-place or boutique and not meriting the description "house" or "shop". What is regarded in this country as a "slum" is an area in which people live in "tenements"

of this kind. It is quite unreasonable to suppose that the Notary who prepared the leases used the word " tenement " to describe an allotment of 5¾ lachams on which there were in fact no buildings. If then it was the case of the plaintiff that this allotment bore one of the Assessment Numbers excluded in the description of the subject of the Leases, the burden lay on him to prove that the allotment bore an excluded Number. But the plaintiff made no attempt to prove this.

Having regard to the Deed of Donation, to the three Leases, and to the admissions of the plaintiff that " the 4th defendant and his people had used this land for 15 years ", the question whether the three donees had in fact possessed the entire land as co-owners does not depend on the perception of the evidence, or on the credibility of oral evidence adduced in this case by the 4th defendant. That being so, I have no hesitation in reaching the conclusion that the three donees had possessed this particular allotment, as also the other four allotments, in common, for a period of ten years or longer, and that the title by prescription thus acquired by the 2nd defendant to a 1/3 share of this particular allotment passed to the 4th defendant on the conveyance P17. But even on the basis of the conclusion which has just been stated, there yet remains for consideration an issue of estoppel, the decision of which depends on certain transactions to which reference has now to be made.

It has already been shown that, at the least during the period 1933 to 1955, the Deed of Gift 4D3 had been accepted by the three donees as being valid, and that accordingly the three donees were in possession as co-owners of all the five contiguous allotments including the allotment of 5¾ lachams which is the subject of this action. But it appears that in 1957, the 2nd defendant (who is the grandson of the donor Suppiah) became aware that his family had a possible claim to be the owner of the entirety of two of these allotments. The 2nd defendant accordingly instituted two actions (the amended plaints are marked 5D1 and 5D2) claiming title to the entirety of two of the allotments on the basis that the title to those allotments passed to his family on the death of his grandfather Suppiah. In those actions, the 2nd defendant specifically denied Suppiah's right to execute the Deed of Donation 4D3, and the validity of the acceptance of that Deed. The two sons of Suppiah (the 1st and 3rd defendants in the instant case) filed answer asserting the validity of the Deed of Donation, but at the same time the present 3rd defendant, even irrelevantly, stated in his answer that he himself was exclusively entitled under the Deed P3 of 1924 to the allotment of 5¾ lachams which is the subject of dispute in the instant case. The 2nd defendant's actions ultimately failed, for in January 1959 decrees (5D3 and 5D6) were entered declaring the three donees under the Donation 4D3 to be entitled each to a 1/3 share of the allotments which the 2nd defendant had claimed exclusively for members of his family.

It will be seen that the 3rd defendant Nagalingam's answers filed in the former actions instituted by the 2nd defendant, both approbated and reprobated the Deed of Donation 4D3 of 1933 executed by his father Suppiah. While claiming that the Deed of Donation was valid in so far as it dealt with the allotments claimed exclusively by the 2nd defendant in those actions, Nagalingam had nevertheless claimed that he had title exclusively to the allotment of 5¾ lms despite the Donation of that allotment in equal shares to himself and to the other two named donees. In fact those actions were pending when Nagalingam executed (in August and October 1958) the conveyances P5 and P6 on the basis that he was sole owner of that allotment.

Indeed the 2nd defendant himself, during the pendency of those actions, acquiesced in Nagalingam's claim ; for on 29th March 1958 Nagalingam executed a mortgage of the allotment of 5¾ lachams in favour of the 2nd defendant. In this mortgage (P10) Nagalingam claimed title to this allotment on the deed P3 of 1924, and there was no mention of Suppiah's Deed of Donation 4D3 of 1933. Thereafter, in quick succession Nagalingam executed further mortgages of this allotment to other persons by P11 of 30th March 1958, by P12 of 3rd May 1958, and by P13 also of 3rd May 1958. The 2nd defendant, by P14 of 8th May 1958, assigned his mortgage P10 to the wife of the Notary who attested the series of Deeds P10 to P14.

Relying on the acceptance by the 2nd defendant of the mortgage by the 3rd defendant of the entirety of this allotment by the bond P10 of March 1958, the plaintiff raised at the trial the issue No. 11, whether the 4th defendant (as the successor in title of the 2nd defendant) is estopped from denying the plaintiff's title. This issue was answered by the learned trial Judge in the affirmative. I have now to refer to several matters which are pertinent to the consideration of that issue.

Firstly, there is the decision of this Court in the case of *Ukku v. Rankiri*[1] (11N.L.R. 212), that the English Law of Estoppel by Deed does not apply in Ceylon. The plaintiff cannot therefore claim that the Deed P10 itself establishes that the 2nd defendant had no title to a 1/3 share of this allotment of land.

Secondly, even if the English Law is to be applied, this is not an action on the Deed itself, for the plaintiff is not here seeking to enforce any obligation of the 2nd defendant or of his privy the 4th defendant which arises under the Mortgage P10. *Phipson* (Evidence, 10th Edition, para 2034).

Thus there can arise in this case only an Estoppel by representation. Applying the rules which are stated in *Phipson* (idem para 2050), the matters to be determined are (*a*) whether the acceptance by the 2nd defendant of the mortgage (P 10) of the entirety of this allotment

[1] *(1908) 11 N. L. R. 212.*

constituted a " precise and unambiguous representation " that the 2nd defendant was not entitled to a 1/3 share of the allotment, and (*b*) whether the plaintiff relied upon that representation when he purchased the allotment from the 3rd defendant.

To consider firstly the second of these matters, the plaintiff nowhere in his evidence stated that the mortgage P10 induced him to believe that the 2nd defendant had no title to a share of this allotment, or that he purchased the allotment on the faith of a belief so induced.

The plaintiff first acquired an interest in this allotment by the Deed P5 of October 1958. That was almost exactly one year after the 2nd defendant had instituted two actions which challenged the validity of the Deed of Donation 4D3. Despite earlier denials, the plaintiff ultimately admitted in cross-examination that "at the time the deed in my favour was executed I was aware of such a case". He was thus aware, when he acquired that interest, that actions were pending as to the devolution of title to two of the allotments formerly owned by Nagalingam Suppiah, the father of the 3rd defendant Nagalingam. In such a situation, it is highly improbable that an intending purchaser of another such allotment would have relied on the inference arising from the Mortgage P10 as an assurance that the mortgagor had title to the entirety of the allotment. Indeed, as already stated, the plaintiff did not in his evidence claim that he had relied on the Mortgage as providing such an assurance.

Counsel for the plaintiff urged that a search of the Land Register would have revealed the existence of the Mortgage P10 and the fact that the 2nd defendant had thereby acknowledged the 3rd defendant's title to this allotment. But equally, a search would have revealed the Leases of 1951 and 1955, in which the 3rd defendant had acknowledged the title of the 2nd defendant to a 1/3 share in the piece of land comprising all the five allotments, and the recitals in the leases would have revealed also (in the Leases of 1955) that all the allotments had been dealt with in the Deed of Donation of 1933.

The Notary who attested Nagalingam's conveyance P6 in favour of the plaintiff in October 1958 had in July that year filed Nagalingam's answers in Actions Nos. 475 and 476, and he had in 1955 attested the leases 4D9 and 4D10 in which the lessors (including Nagalingam) had acted on the title accruing to them on the Deed of Donation. In view of the Notary's familiarity with matters affecting these five allotments, it is quite unrealistic to think that the Notary himself would have had any faith in the acknowledgment in P10 that the 2nd defendant had no title to one of them.

Applying the rule as stated in *Lewis v. Lewis*[1] (1904, 2 Ch. D. 656), I hold that the plaintiff in this case failed to discharge the onus of proving that he changed his position in consequence of representations made by the 2nd defendant in the actions he had filed or impliedly made by him in accepting the mortgage of this allotment.

[1] *(1904) 2 Ch. D. 656.*

The mortgage bond P10, which is claimed to have constituted a representation that Nagalingam was sole owner of this allotment, did not require to be signed, and was not in fact signed by the 2nd defendant. Hence it was at best only an implied acknowledgment by the 2nd defendant of the 3rd defendant's ownership of the land. Such an acknowledgment in my opinion falls far short of being a " precise and unambiguous representation". Had the bond been put in suit in a hypothecary action, what would have been sold in execution of the decree is not the land itself, but only the right title and interest of the 3rd defendant ; and if some persons other than the 3rd defendant had title jointly with him, no interest other than that of the 3rd defendant would pass to a purchaser. Moreover it is not uncommon for persons holding only a share in land to purport to mortgage the entire land. In these circumstances I hold that the two of the rules referred to by *Phipson* were not satisfied in this case, and that the plea of estoppel raised by the plaintiff must fail.

In the result the appeal has to be allowed and the decree of the District Court is set aside. Decree will now be entered declaring the plaintiff, the 1st defendant, and the 4th defendant, to be each entitled to a 1/3 share of the land described in the schedule to the plaint. The plaintiff will pay to the 4th defendant the costs of action and the costs of appeal.

ALLES, J.—

A material question which arises for consideration in this appeal is the validity of the deed of donation 4D3 of 17th September, 1933, whereby the donor Nagalingam Suppiah gifted the land called Parayady Mullai kaddaiyady and Pannikodduvalavu, comprising of 5 lots, to his 2 sons, the 1st and 3rd defendants and his grandson and 3rd defendant, who were minors at the time of the execution. The donation was accepted by their stepmother Rasaratnam on their behalf. The learned trial Judge, after a consideration of certain decisions of this Court, to which reference will presently be made, has held that there has been no valid acceptance of the Deed 4D3.

By 4D3 Nagalingam Suppiah created a Trust of the land described in the schedule to the deed which consisted of 5 lots in extent 22¾ lachams. This extent included the 5¾ lachams which form the subject matter of this suit. The three donees were appointed trustees to look after, maintain and manage the said Trust and the purposes and conditions of the Trust so created were set out in the deed. The trustees were required to perform certain religious rites to one of the deities ; the expenses of the Poojas were to be met out of the income of the trust property ; so also were the expenses for the maintenance of the trust property and the payment of rates and taxes ; the donees were entitled to live on the property, enjoy the produce and take the income in equal shares and such income was to be deposited with the firm of Suppiah and Sons before the income was divided among the trustees ; Rasaratnam, the acceptor was appointed guardian of the minors and entitled to draw all household expenses and an extra sum of Rs. 10 monthly ; in the event of any dispute between the

acceptor and the minors a Board of Supervisors appointed under the Trust was required to settle such differences and disputes and a Board of Supervisors of named persons were appointed under the deed. The Board was to function until the 1st defendant attained his twenty-fifth year.

There was on the face of the deed an acceptance of the gift by Rasaratnam, who signified her assent by placing her mark on the deed. Nagalingam Suppiah died in 1933 and Rasaratnam and the minor donees presumably continued to be in possession of the property in terms of the deed of donation. After the donees attained majority they entered into deeds of lease in respect of the properties covered by 4D3. By 4D12 of 1951 the 1st, 2nd and 3rd defendants leased to the 4th defendant for a period of 10 years a divided extent of the entire land, 55½ feet by 32 feet, for a sum of Rs. 3,000 and permitted the 4th defendant to erect buildings on the allotment in question. By 4D9 of 1955 the 2nd and 3rd defendants leased the entirety of the property exclusive of the shrine room and living rooms to the 4th defendant for a period of 10 years on payment of a sum of Rs. 100 monthly as lease rent. Soon afterwards by 4D10 of 17th November 1955, the 1st defendant entered into a similar lease with the 4th defendant. In 4D9 and 4D10 the defendants recited that they were acting in their capacity as trustees under the deed of donation 4D3.

The ground on which the learned Judge held that there was no valid acceptance of the deed of donation was, on the basis that Rasaratnam was neither the legal nor the natural guardian of the minor donees and therefore could not accept on their behalf. In support, the learned trial Judge relied on the decisions of the Supreme Court in *Bindua v. Untty*[1], *Fernando v. Alwis*[2] and the judgment of the Privy Council in *Nagalingam v. Thanabalasingham*[3] which was followed by Sansoni J. in *Packirumuhaiyadeen v. Asiaumma*[4]. The learned Judge has, however, failed to consider certain other decisions of the Supreme Court and in particular, the decision of the Privy Council in *Abeyawardene v. West*[5] which appear to permit the acceptance of a donation by a person, other than a natural guardian recognised under the Roman Dutch law. Since this question of an acceptance of a donation on behalf of a minor donee arises not infrequently for consideration in our Courts, I propose to analyse the decisions of our Courts on this controversial topic. I shall first deal with the decisions of the Supreme Court up to 1952 when the Privy Council delivered its judgment in *Nagalingam v. Thanabalasingham* and thereafter consider the impact of the two Privy Council judgments on the law of Ceylon as it stands today.

[1] *(1910) 13 N. L. R. 259.*
[2] *(1935) 37 N. L. R. 201.*
[3] *(1952) 54 N. L. R. 121.*
[4] *(1956) 57 N. L. R. 449.*
[5] *(1957) 58 N. L. R. 313.*

A donation being a contract, acceptance on behalf of a minor by a competent person is essential to clothe the deed with validity. Thus in *Wellappu v. Mudalihami* [1] where a father, after making the deed of gift to his minor son remained in possession of the property, managed it, and, while the donee was still a minor, revoked the deed of gift, the Court held that the revocation was good because there was no acceptance of the gift on behalf of the minor. Sometimes however acceptance can be presumed, even if the parents of the minor continued to be in possession of the property. This situation arose in the case of *Government Agent S.P. v. Carolis* [2] where the grandparents gifted property to the grandchildren who were minors. The gifted property came into the possession of the parents and there was a presumption that they entered into possession on behalf of the minors.

The rule of the Roman Dutch law, that acceptance on behalf of a minor must be by a natural guardian, i.e., either the parents or the grandparents is however not an inflexible rule and decisions of our Courts have recognised that persons other than natural guardians can validly accept a gift on behalf of minors in certain circumstances. Since minors are always favoured under the law and entitled to accept an unequivocal benefit such as a donation, there appears to be no reason in principle why the strict rule of the Roman Dutch law as to the class of persons who can accept on behalf of the minor should be restricted, particularly if the acceptor is a person in whom the donor has confidence.

In *Francisco v. Costa* [3] the donation by the parents to their minor son was accepted by the grandmother who was also a donee under the deed. The grandmother and the minor son entered and continued to be in possession of the donated property. Although the grandmother was a natural guardian, it was submitted, that the acceptance of the gift on behalf of the minor was insufficient, as she was not a duly constituted guardian under the law, not having been authorised by a competent court to accept the donation on behalf of the minor. Dias J. in holding that the acceptance was valid and that the grandmother was "not incompetent" stated " that on the acceptation of gifts on behalf of minors the Dutch law is very wide and goes so far as to lay down that gifts to children not yet born may be accepted by those in whose charge they ought to be when born (2 Burge 43 ; Voet 39-5-12), by some public person (Van der Keesel Th. 585 p. 172), and by a notary who attests the deed (2 Burge p. 145).". Clarence J. held that "since the parents, when they executed this conveyance, *allowed* the grandmother to accept on behalf of the infant and take possession of the property, he can see nothing wanting to clothe the gift with reality ".

The same view was adopted by Middleton J., with whom Lawrie A.C.J. agreed, in *Lewishamy v. Cornelis de Silva* [4]. Following the decision in *Francisco v. Costa* the Court held that where the father, the donor,

[1] *(1903) 6 N. L. R. 233.*
[2] *(1896) 2 N. L. R. 72.*
[3] *(1889) 8 S. C. C. 189.*
[4] *(1906) 3 Bal. Rep. 43.*

permitted the elder brothers to accept for their minor brothers such an acceptance was valid. In *Tissera v. Tissera*[1] there was an acceptance on the face of the deed by a complete stranger and a person of a different caste to that of the donor. The acceptor signed at the request of the donor as neither the mother, grandfather nor father of the minor donees were alive at the time of the execution of the deed. The acceptor in cross-examination admitted that the maternal grandmother was alive at the time of the execution and could have accepted on behalf of the donees as their natural guardian. The Court (Hutchinson C.J. and Grenier J.) held that acceptance was a matter of evidence. Subsequent to the execution of the deed one of the donees mortgaged his share and there was a recital in the bond that he acquired the property by virtue of the deed of gift. The Court held, that if there was no acceptance on behalf of the donees or by the donees themselves, there would not have been this recital. Acceptance was presumed from the conduct of the donees and from other circumstances which indicated that the donees did not refuse the gift but accepted it. It must be assumed, that had this evidence not been available, the Court would have held that the acceptance by the stranger, even at the instance of the donor, would not have been sufficient. In the same year the same two Judges in *Senanayake v. Dissanayake*[2] held that it was not essential that the acceptance of the deed of gift should appear on the face of it but that such acceptance may be inferred from the circumstances. The gift was "made over" by the donor to his mistress Ukku Menika and her two minor children. Ukku Menika and the donees possessed the property and thereafter the donees dealt with the property. The Court held that "it was the natural conclusion from the evidence that Ukku Menika with the consent of the grantor *accepted the gift for herself and her children* ". If this be a correct view of the law, I see no reason, in principle, why in the present case, Rasaratnam the stepmother, cannot be presumed to have validly accepted the gift on behalf of the minor donees. The case of *Tissera v. Tissera* was considered in *Muttupillai v. Velupillai*[3]. In this case although the acceptor (the donor's brother-in-law) was selected by the donor, he did not possess on behalf of the donee because in law he was not entitled to act on behalf of the donee and his possession was not the possession of the donee. Unlike in the case of *Tissera v. Tissera* the donee did not deal with the property after attaining majority and did not thereby ratify the acceptance of the gift by the acceptor.

From a consideration of the decisions in the early cases it would appear, that there was no hard and fast rule that a donation to a minor to be valid, must be accepted by a natural guardian or a person appointed by Court. If a competent person was allowed by the donor to accept, such an acceptance would be held to be good, provided there are other circumstances which would indicate that the acceptance was good. What the circumstances should be, would depend on the facts of the particular

[1] *(1938) Weerakoon 36.* [2] *(1908) 12 N. L. R. 1.*
[3] *(1909) 1 Current L. R. 73 ; 4 Bal. Rep. 110.*

case. In *Government Agent S.P. v. Cornelis* (supra) the circumstances were held to be sufficient, whereas in *Fernando v. Cannangara* [1] the circumstances were held to be insufficient. In the latter case there was a gift by the father to his minor children. The deed was handed to the nephew who gave it back to the donor to have it registered. After registration the deed was handed back to the nephew but the donor continued to be in possession. The nephew was not the agent of the donee and the donee was not competent to appoint one. Lawrie A.C.J. in the course of his judgment indicated the circumstances necessary to constitute an acceptance. Said he "*There was no acceptance on the face of the deed itself; there was no acceptance by a public person or by anyone authorised to act for the minors; no possession followed; there are in fact no circumstances from which acceptance can be presumed*". There are other cases, however, in which the circumstances were held to be sufficient to constitute an acceptance. In *Babaihamy v. Marcinahamy* [2] the father donated half the property to his adopted daughter and the other half to his three adopted sons. Salmon, one of the adopted sons, who was a major, accepted the gift for himself and the other minor donees, who were present at the time of the donation. Subsequently Salmon and the other donees dealt with the property. The acceptance was held to be good. A similar case in which acceptance was held to be valid was *Bindua v. Untty*, a case which has been referred to by the trial Judge. Here the major donee accepted on behalf of himself and the minor donees. They entered into possession of the property and thereafter dealt with it. The case of *Babaihamy v. Marcinahamy* was followed in *Hendrick v. Sudritaratne* [3]. Here the prospective husband of the minor daughter accepted on her behalf and the deed was handed to him. Lascelles C.J. in the course of his judgment stated:

> "There is, I think, a natural presumption in all these cases that the deed is accepted. Every instinct of human nature is in favour of that presumption, and I think that when a valuable gift has been offered, and it is alleged that it has not been accepted, some reason should be shown for the alleged non-acceptance of the gift. It is in every case a question of fact whether or not there are sufficient indications of the acceptance by the donee."

Before I consider the case of *Fernando v. Alwis* [4] referred to by the learned trial Judge, there are three other decisions which have a relevant bearing on the question at issue, if only for the reason that they have been relied upon by the Privy Council in *Nagalingam v. Thanabalasingham* (*54 N. L. R. 121*). They are *Cornelis v. Dharmawardene* [5], *Avichchi Chetty v. Fonseka* [6] and *Silva v. Silva* [7].

[1] (*1897*) *3 N. L. R. 6.*
[2] (*1908*) *11 N. L. R. 232.*
[3] (*1912*) *C. A. C. 80.*
[4] (*1935*) *37 N. L. R. 201.*
[5] (*1907*) *2 A. C. R. Supplement 13.*
[6] (*1905*) *3 A. C. R. 4.*
[7] (*1908*) *11 N. L. R. 161.*

In *Cornelis v. Dharmawardene* Middleton J., in a brief judgment stated "that the acceptance of a deed of gift made by a father in favour of his minor child by an uncle of the minor on behalf of the minor is not a valid acceptance as not having been an acceptance of a legal or convential guardian". The report states that this judgment follows the decisions in *Fernando v. Cannangara* and *Wellappu v. Mudalihami*. I have already dealt with the cases of *Fernando v. Cannangara* and *Wellappu v. Mudalihami* where the Court held that the circumstances were insufficient to presume acceptance.

In *Avichchi Chetty v. Fonseka* the donation was accepted by an uncle of the minor donees for and on their behalf, and the deed witnessed, *inter alia*, this acceptance. The father of the minor who was divorced from his wife was alive at the date of the deed of donation. The Court held that the uncle was not a person qualified to accept the donation on behalf of the minor donees as he was neither the legal guardian of the minors nor their natural guardian, a term which could only have been applied to their parents both of whom were alive although the marriage between them had been dissolved.

Silva v. Silva was also a case where the gift to the minor was accepted in his favour by an uncle. According to the judgment the property never came into possession, either of the donee or his self-constituted guardian but always remained with the donor. The use of the word "self constituted" guardian seems to suggest that the donor never selected the uncle as the guardian. There was no evidence that either the donee or the uncle had possession of the property and in the absence of circumstances from which acceptance can be presumed, the Court following the decisions in *Avichchi Chetty v. Fonseka* and *Cornelis v. Dharmawardene* held that the uncle was not competent to accept the gift on behalf of the minor.

These three decisions, on which reliance was placed by the Privy Council in *Nagalingam v. Thanabalasingham* support the proposition of law that in the case of a donation to a minor the law requires acceptance by the natural or legal guardian of the minor. It is for this same reason that in the later case of *Francisco v. Don Sebastian*[1] the Court held that the acceptance was bad.

In *Fernando v. Alwis* the acceptance was in the following terms :—

> "We the undersigned Johanes Fernando and Harmanis Suwaris for and on behalf of Theodoris, John Henry, Marthinus and James do thankfully accept the above gift."

Johanes was a major and also a donee and Theodoris, John Henry, Marthinus and James were his minor brothers. Harmanis Suwaris was a stranger and was not proved to be a natural guardian of the minors. Maartensz J., while accepting the dictum in *Lewishamy v. Cornelis de*

[1] *(1964) 69 N. L. R. 440.*

Silva and *Francisco v. Costa* that a major brother could accept on behalf of the minor brothers held, that on a reasonable interpretation of the acceptance clause Johanes had accepted the gift for himself and Harmanis Suwaris had accepted on behalf of the minor donees. He distinguished the cases of *Bindua v. Untty* and *Babaihamy v. Marcinahamy* where, unlike in the case under consideration, the donees were in fact given possession of the property. He held that, unlike in *Tissera v. Tissera*, the acceptor did not accept the gift at the request of the donor nor was there evidence that the minors were present at the time of the execution of the deed or that they accepted the gift themselves or appointed Harmanis Suwaris to accept on their behalf. The learned Judge, though accepting the position that "the law favours acceptance of a gift in the case of minors" (*Francisco v. Costa* and *Government Agent S.P. v. Carolis*) and that "acceptance will be presumed when there are circumstances to justify such a presumption" (*Lokuhamy v. Juan*)[1], held that in the case under consideration there were no circumstances from which such a presumption could be drawn and there was no affirmative evidence of acceptance on the minor's part. A further argument in support of the acceptance of the gift was based on a deed of renunciation made subsequently by the donor and a disclaimer and renouncing by the donees of all the rights to which they were entitled under the Deed of Gift. After a consideration of the law and the decided authorities, Maartensz, J. held that the deed of renunciation cannot by itself be held to establish an acceptance by the donees. In the result the learned Judge held, that the gift of the premises to the donees, other than Johanes, was invalid for want of a valid acceptance. It will therefore be appreciated that in *Fernando v. Alwis* Maartensz, J., after a review of the earlier authorities, held that the circumstances were insufficient to establish a valid acceptance on behalf of the minors. In doing so the learned Judge was reiterating the principle laid down in the earlier cases of *Government Agent S.P. v. Carolis*, *Fernando v. Cannangara*, *Bindua v. Untty* and *Hendrick v. Sudritaratne*.

The decisions in Ceylon up to 1952 have held that a grandmother can accept on behalf of the grandson (*Francisco v. Costa*); that an elder brother who was a major could accept on behalf of his minor brothers (*Lewishamy v. Cornelis Silva*, *Bindua v. Untty*); that a mistress could accept on behalf of her minor children (*Senanayake v. Dissanayake*); that an adopted major son could accept on behalf of his adopted minor brothers and sister (*Babaihamy v. Marcinahamy*); that the prospective husband of the minor daughter could accept on behalf of his prospective bride (*Hendrick v. Sudritaratne*) and that even a stranger could accept provided there was evidence of conduct of the donees from which acceptance could be presumed (*Tissera v. Tissera*). In all these cases there were some or all of the following circumstances—a selection of the acceptor by the donor, the presence of the donees at the time of execution, acceptance on the

[1] (*1872–75*) *Ramanathan 215.*

face of the deed, delivery of the deed to the acceptor in the presence of the donees, possession of the donated property by the donees and a dealing with the donated property by the donees after majority—circumstances from which the Court was entitled to presume that the donees had subsequently ratified the acceptance. The cases in which acceptance was held not to be valid were cases in which the circumstances were insufficient and acceptance could not be presumed. (*Fernando v. Cannangara, Muttupillai v. Velupillai, Silva v. Silva* and *Fernando v. Alwis*). Therefore the character of the acceptor is not conclusive on the question whether there was a valid acceptance or not. Acceptance depends on the facts of each particular case, and when the acceptor was not a natural guardian or a person appointed by a competent Court, acceptance could be presumed if there were sufficient circumstances for a Court to draw such an inference.

The judgment of the Supreme Court in *Nagalingam v. Thanabalasingham*[1] considered the decisions in *Avichchi Chetty v. Fonseka, Silva v. Silva* and *Cornelis v. Dharmawardene* but Canekeratne J., following the decisions in *Bindua v. Untty* and *Hendrick v. Sudritaratne* held that there were sufficient indications that the maternal uncle had accepted the gift on behalf of the donees. The Privy Council[2] set aside the judgment of the Supreme Court on the ground that the donees had been a party to the revocation of the earlier deed of gift. The donors had purported to execute a deed of revocation unilaterally and on the same day, the donees accepted from the donors a new deed of gift of the properties covered by the earlier gift, subject to new conditions. The question, therefore of the acceptance of the deed of gift by the maternal uncle was only incidental. Sir Lionel Leach who delivered the advice of the Privy Council in the course of his judgment stated :—

> " Their Lordships do not consider that it is necessary to discuss the reasons given by the Supreme Court for holding that there was acceptance of the gift by Kanthavanam, because even if its reasons are sound (and here their Lordships express no opinion) they consider that he must be regarded as being a party to the revocation of the Exhibit P4."

Mr. Thiagalingam however, relied heavily on the following passage in the judgment of the Privy Council :—

> " 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 to the law of Ceylon. The finding is supported by authority.

[1] *(1948) 50 N. L. R. 98.* [2] *(1952) 54 N. L. R. 121.*

> 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* and *Cornelis v. Dharmawardene*. 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 any such appointment existed. Therefore acceptance could only spring from Kanthavanam himself, if there was in fact acceptance."

As a statement of law, that in the case of a donation to a minor, the law requires acceptance by the natural or legal guardian of the minor, the passage quoted above is correct, but in an appropriate case this statement would be subject to the other general proposition (supported by authority) that the circumstances of a particular case may be sufficient to establish an acceptance on behalf of a minor by a person who is not a natural guardian. I find from the argument of Counsel in the English Reports[1] that most of the earlier cases have been cited to their Lordships by Counsel for the respondents, but it is very likely, in view of the observations of Sir Lionel Leach quoted earlier, that the Privy Council did not consider it necessary to deal with the authorities cited by Counsel, some of which have already been referred to by Canekeratne J. in the course of his judgment. I have already commented on the facts of *Cornelis v. Dharmawardene* and *Silva v. Silva*. In regard to the latter case it is pertinent to note the observations of Wood Renton J. in *Hendrick v. Sudritaratne*[2]. Said the learned Judge at p. 83 :

> "I may further point out, that even in the case of *Silva v. Silva*, it was recognised that an acceptance by a person, who was neither the natural nor the legal guardian of the minor, would be rendered valid where the subject of the donation came into the possession either of the donee or of his self-constituted guardian."

The case *Silva v. Silva*, therefore, has not the binding force for which the Privy Council contends.

The Privy Council decision in *Nagalingam v. Thanabalasingham* created difficulties for the Supreme Court and in the case of *Packirmuhaiyudeen v. Asiaumma*[3] Sansoni J. (as he then was) held that a major brother could not validly accept a gift on behalf of his minor brothers. He distinguished the cases of *Lewishamy v. de Silva* and *Francisco v. Costa* on the ground that the father, who was the donor in these cases, *permitted* acceptance by the acceptor, and stated that the subsequent case of *Babaihamy v. Marcinahamy* and *Bindua v. Untty* have upheld the acceptance by such

[1] *(1953) A. C. 1 at p. 6.* [2] *(1912) C. A. C. 80.*
[3] *(1956) 57 N. L. R. 149.*

persons, who are neither legal nor natural guardians, only where possession of the property by the donees was subsequently proved. He then stated at p. 451:

> "The recent decision of the Privy Council in *Nagalingam v. Thanabalasingham* makes it clear that acceptance on behalf of a minor by such a person as an uncle is not a valid acceptance even where the donor was the father and the donee was his minor son..... Now if there was any force in the argument that an elder brother or a grandmother or an uncle could accept a donation on behalf of a minor merely because the father, who was the donor *permitted* such acceptance, the Privy Council would undoubtedly have held that there was a valid acceptance in that case. I am therefore of opinion that there was no valid acceptance on behalf of the minor donee in the present case."

In 1951 the case of *West v. Abeyawardena* [1] came up for hearing before the Supreme Court. The main question centred round the issue whether the deed of gift in question created a fideicommissum in favour of a family but incidentally the question of the acceptance of the deed of gift arose for consideration. The deed was accepted on behalf of two minors by their two major brothers and their brother-in-law. The Supreme Court held that the question whether the brother-in-law could accept on behalf of the minors was only of academic interest since the donees by their subsequent conduct ratified the acceptance of the gift by their brother-in-law. When the case came up for hearing before the Privy Council Lord Keith of Avonholm, who delivered the advice of the Privy Council said at p. 319 [2]:

> "Both Jane and Cecilia were minors in 1883 and acceptance was made on their behalf by Cooray and their brothers Alfred and James. Cooray, as appears from the evidence in the case, was Jane's brother-in-law, married to her sister Isabella. The deed was executed before a notary who attested that he knew all the parties. Their Lordships see no reason to think that this was not a valid acceptance on behalf of Cecilia and Jane. Their natural guardian, their father and their mother, could not accept for them, because they were the donors. 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* as was also acceptance by a brother on behalf of his minor brother in *Lewishamy v. de Silva.* One of the grounds of judgment in these cases was that the donors had *allowed* such acceptance to be made on behalf of their minor children."

[1] *(1951) 53 N. L. R. 217.* [2] *(1957) 58 N. L. R. 313 at 319.*

Their Lordships therefore have approved of the principles of acceptance referred to in the earlier decisions of the Supreme Court to which reference has already been made.

In view of the decision of the Privy Council in *Abeyawardene v. West*, Sansoni J. had occasion to reconsider his decision in *Packirmuhayudeen v. Asiaumma* (supra) in the subsequent case of *Nagaratnam v. John* [1] where he dealt with what he called the "vexed question as to what constitutes proper acceptance of a donation to a minor". He stated that his decision in the former case "can no longer be considered to be correct" since it was clear from the decision of the Privy Council in *Abeyawardene v. West* "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".

Since the decision of the Privy Council in *Abeyawardene v. West* the Supreme Court has consistently accepted the principle that an acceptance on behalf of a minor is valid if the donor had allowed such acceptance —*Kirigoris v. Eddinhamy* [2] and *Francisco v. Don Sebastian* [3].

In the present case it is quite clear that Nagalingam Suppiah allowed his second wife Rasaratnam to accept 4D3 on behalf of the 1st to the 3rd defendants; that there was an acceptance on the face of the deed; that according to the terms of the deed Rasaratnam and the donees were entitled to be in possession of the property and enjoy the income and produce and that when the donees attained majority they ratified the acceptance on their behalf by dealing with the property reciting 4D3 as their source of title. If the learned trial Judge considered all these circumstances and had his attention been drawn to the Privy Council decision in *Abeyawardene v. West* and the decision of Sansoni J. in *Nagaratnam v. John*, he would probably have come to the conclusion that there was a valid acceptance of the gift by Rasaratnam.

I am of the view therefore that the deed 4D3 was validly accepted on behalf of the 1st to the 3rd defendants and that it conveyed good title.

I have read the judgment of My Lord the Chief Justice who has considered the other questions raised at the argument of the appeal. I am in agreement with his conclusion that the three donees had possessed the particular allotment and also the other four allotments for a period of over ten years and have thereby acquired a title by prescription. I also agree that the plaintiff's plea of estoppel is not entitled to succeed. In the result the appeal is therefore allowed and I concur with the order proposed by the Chief Justice.

Appeal allowed.

[1] *(1958) 60 N. L. R. 113.* [2] *(1965) 69 N. L. R. 223.*
[3] *(1964) 69 N. L. R. 440.*