1919.

Present: De Sampayo J. and Loos A.J

BANDA *et al. v.* PATTISON *et al.*

348—D. C. Kegalla, 4,803.

Representation by a minor that his step-brother was owner of a certain share—Subsequent claim by minor from purchaser—Estoppel.

Where minors who were entitled to five-sixths share of a piece of land knowingly, and not through ignorance, told the defendants' agent that their step-brothers were entitled to a two-sixths share of the land, and defendants bought the same,—

Held, that the minors were estopped from setting up title to any portion of the share which their step-brothers had sold.

"It is generally immaterial whether a person who is guilty of misrepresentation is ignorant of the true facts, so long as the other party is, in fact, misled. But where such person makes the representation, or stands by knowingly, there arises an additional element of fraud, and in such a case infancy does not relieve him from the consequences."

THE facts appear from the judgment.

Samarawickreme (with him *Cooray*), for plaintiffs, appellants.

Hayley (with him *Croos-Dabrera*), for defendants, respondents.

Cur. adv. vult.

April 17, 1919. DE SAMPAYO J.—

The lands, of which the plaintiffs claim one-sixth share, were the property of Hetuhamy Vedarala, who in 1863 gifted one-third share to his wife Hetuhamy, and two-third share to his son Dingiri Appuhamy. The plaintiffs are the children of Dingiri Appuhamy, and

on his death in 1889 they became entitled to his two-third share. The widow Hetuhamy married again, and had three children by the second husband, viz., Punchi Appuhamy, Kiri Banda, and Ran Menika. Hetuhamy died intestate in 1901, and the plaintiffs became entitled to another one-sixth share by inheritance from her. It is this one-sixth share which is in dispute in this case. In 1907 the plaintiffs sold the two-third share which they inherited from their father Dingiri Appuhamy to Messrs. Hunt and Orchard, who in 1910 sold to the second defendant company. The second bed children sold the whole of Hetuhamy's one-third share in 1908 to Messrs. Hunt and Orchard, who sold the same also to the second defendant company. The entirety of these lands were opened up and planted, and are now incorporated in Golinda estate, of which the first defendant is the superintendent, and the second defendant company the proprietors.

The question in this case is whether the plaintiffs are, by reason of certain representations made by them, estopped from denying that their step-brothers and sister were solely entitled to their mother's one-third share, and that they themselves had no interest therein. It appears that when Messrs. Hunt and Orchard wanted to purchase the lands in 1907, they employed their lawyer, Mr. Ondaatje, to investigate the title. The plaintiffs then stated to Mr. Ondaatje, as well as to the notary who attested the deed from them to Messrs. Hunt and Orchard, that they were entitled to the two-third share which they were going to sell, and that the remaining one-third share belonged to their step-brothers and sister.

It is argued on behalf of the plaintiffs that these circumstances do not amount to estoppel. In the first place, it is contended that Mr. Ondaatje was not agent of Messrs. Hunt and Orchard to inquire into the title of the second bed children to their mother's one-third share, but was deputed only to consider the matter of the two-third share which the plaintiffs inherited from their father, and which they propose to sell, and that, therefore, any representation made to Mr. Ondaatje with regard to the mother's one-third share is not available for the purpose of an estoppel. It is further urged that since the second bed children were then unwilling to sell, it cannot be said that in subsequently purchasing the one-third share from them, Messrs. Hunt and Orchard acted on any belief induced by the plaintiffs' representation. I am unable to accept either of these propositions. The evidence indicates that Mr. Ondaatje's authority necessarily involved an investigation of title of all claimants. Punchi Appuhamy, one of the plaintiffs' step-brothers, was also present, and it is clear to my mind that the investigation was as to title to the lands as a whole. If in the course of that investigation the plaintiffs represented to Mr. Ondaatje that they were only entitled to two-third share, and that their step-brothers and sister were entitled to the remaining one-third share, I think the representation

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in effect was one made to Messrs. Hunt and Orchard. Although Messrs. Hunt and Orchard did not at once act and proceed to buy the one-third share from the plaintiffs' step-brothers and sister, it was upon the result of Mr. Ondaatje's investigation that they acted. Moreover, it appears that the objection to sell the one-third share at first was on the part of Punchi Appuhamy alone, and that the negotiations were never completely dropped, the first plaintiff himself endeavouring to persuade Punchi Appuhamy to give his consent.

But a more serious difficulty arises from the fact that the plaintiffs were minors at that time of the representation. The first plaintiff was born on September 15, 1886, and the second plaintiff on January 1, 1889, so that in May, 1907, when Mr. Ondaatje questioned them, the first plaintiff was just under twenty-one years of age, and the second plaintiff was about nineteen years of age. It should be remembered, however, that estoppel is not a matter of contract, but is based on a principle of equity. In the *Citizens' Bank of Louisiana v. First National Bank of New Orleans*,[1] Lord Selbourne said: "Nothing can be more certain than this, that the doctrine of equitable estoppel by representation is a wholly different thing from contract or promise or equitable assignment or anything of that sort." It is generally immaterial whether the person who is guilty of misrepresentation is ignorant of the true facts, so long as the other party is, in fact, misled. But where such person makes the representation or stands by knowingly, there arises the additional element of fraud, and in such a case infancy does not relieve him from the consequences. This equitable doctrine was stated in *Savage v. Foster* [2] thus: "When anything in order to a purchase is publicly transacted, and a third person knowing thereof and of his own right to the lands intended to be purchased doth not give the purchaser notice of such right, he shall never afterwards be admitted to set up such right to avoid the purchase; for it was an apparent fraud in him not to give notice of his title to the intended purchaser, and in such case infancy or coverture shall be no excuse. Neither is it necessary that such infant or *femme covert* should be active in promoting the purchase, if it appears that they were so privy to it that it could not be done without their knowledge." That is a case of standing-by, and the statement of the law may require some modification as to the circumstances which create a duty to give notice, but it remains an authority for the proposition that when the rule applies infancy is no excuse. See also *Mills v. Fox*.[3] That is the case of proposals for a settlement upon the marriage of a female infant, a ward of Court, made to Court by her mother and guardian, and it was held that as both the marriage and the settlement were sanctioned by the Court upon the faith of a representation made on her behalf that she was entitled in tail to certain property, she was

[1] *L. R. 6 H. L. 352.*

[2] *(1723) 9 Mod. Rep. 35.*

[3] *(1887) L. R. 37 Ch. D. 153.*

bound in equity to make good such representation, notwithstanding her infancy at the time it was made. Stirling J., who decided the case, quoted with approval a passage from Lord Cranworth's judgment in *Gordon v. Money*,[1] which is in these terms: " Nay, more, I think the principle has been carried and may be carried much further, because I think it is not necessary that the party making the representation should know that it was false; no fraud need have been intended at the time. " And he proceeded to state that the lady was not at liberty to deny the truth of the representation made on her behalf, and that her position in that respect was not affected by the circumstance that she was an infant at the time.

In the present case it is not necessary to go the length to which the doctrine was carried in the above cases, for it may be reasonably concluded from all the circumstances disclosed in this case that the representation made by the plaintiffs was due, not to ignorance of their legal right by inheritance from their mother Hetuhamy, but to some family arrangement, by which the second bed children were allowed to possess the whole of Hetuhamy's one-third share. The District Judge gave somewhat different reasons for holding that the plaintiffs were estopped from making their present claim, but, on the ground which I have stated, I think his conclusion is right.

I would dismiss the appeal, with costs.

Loos A.J.—I agree.

Appeal dismissed.