Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Grenier.

1908.
May 29.

SILVA *v.* SILVA.

D. C., Galle, 7,997.

Donation . to minor—Acceptance by uncle—Invalidity—Natural guardian—Acceptance at some future time by minor after attaining majority.

In the case of a donation to a minor the law requires a present acceptance by the natural or legal guardian of the minor, and not an acceptance at some future indefinite time by the minor himself, after he has attained majority.

Where a deed of gift executed in favour of a minor by his father was accepted by the uncle of the minor on behalf of the minor—

Held, that such acceptance was invalid, the uncle not being the natural guardian of the minor.

APPEAL from a judgment of the District Judge of Galle.

The facts sufficiently appear in the judgment of Grenier A.J.

Bawa, for the defendant, appellant.

A. St. V. Jayewardene (with him *H. Jayewardene*), for the plaintiff, respondent.

Cur. adv. vult.

May 29, 1908. GRENIER A.J.—

The simple question in this case is whether the deed of gift No. 595 dated May 1, 1893, which was executed in favour of the plaintiff by his father, was duly accepted or not. The District Judge held in the affirmative, and the defendant has appealed.

The plaintiff was a minor at the date of the gift, and it was contended for the respondent that there was acceptance of the same for him by his uncle Paulis Silva. Admittedly Paulis Silva was not the legal guardian of the minor appointed either by will or by the Court, and he cannot be regarded as his natural guardian for obvious reasons. 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 *Cornels v. Dharmawardana*,[2] and the cases therein cited. I adhere to my decision in the first case, Mr. Justice Wendt having been of the same opinion. Mr. Justice Middleton's views were precisely the same in the second case.

[1] *3 App. Court Reports 5.*

[2] *3 App. Court Reports Supplement 13.*

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It was argued for the respondent that it was open to the donee to accept the gift at any time before the death of the donor. The answer to this is that the law requires a present acceptance by the natural or legal guardian to give validity to a donation in the case of a minor, not an acceptance at some future indefinite time, by the minor himself, after he had attained majority. In the case before us the property which was the subject of the donation never came into the possession either of the donee or of his self-constituted guardian, but always remained with the donor. The District Judge has expressly found this to be so. He was in error, however, in holding that there was due acceptance. There could not be in law any acceptance, as I have already pointed out, by an uncle as natural guardian of his minor nephew.

I would set aside the judgment of the Court below, and dismiss the action with costs.

HUTCHINSON C.J.—I am of the same opinion.

Appeal allowed.