1927.

Present: Fisher C.J. and Drieberg J.

FERNANDO *v.* FERNANDO.

211—D. C. Negombo, 1,494.

Lottery—Ticket purchased by father in name of son—Prize—Beneficial interest—Donation.

Where a person bought a ticket in a lotterv in the name of his minor son no beneficial interest in a prize drawn for such ticket passed to the son.

APPEAL from a judgment of the District Judge of Negombo. The facts appear from the judgment of the Chief Justice.

Croos Da Brera, for plaintiff, appellant.

November 3, 1927. FISHER C.J.—

In this case the plaintiff-appellant is the father of the defendant-respondent who is sixteen and a half years old. The appellant, who is a carter and according to the evidence a very poor man, took a ticket in a sweepstake for which he paid Rs. 2. On being asked " in whose name the ticket was to be bought " he gave the name of his son, the respondent. The owner of the ticket became entitled to receive the sum of Rs. 12,695.25.

On the appellant going to draw the money the persons whose duty it was to pay it came to know that the name given by the appellant was that of a minor. They declined to pay it to the appellant and paid it into Court to be held for the benefit of the respondent. Eventually the action, from the judgment in which this is an appeal, was brought claiming a declaration that the plaintiff-appellant was entitled to the money. The guardian *ad litem* of the minor applied for the leave of Court to consent to judgment on behalf of the minor under section 500 of the Civil Procedure Code. Evidence was given as to the circumstances under which the ticket was bought, and the son went into the witness box and said that he knew nothing about the purchase of the ticket until after a horse had been drawn in respect of it, and that he had no objection to his father drawing the money. The learned Judge refused his leave to consent to judgment and dismissed the action with costs.

The question is, whether under the circumstances the beneficial interest in the Rs. 12,695.25 is vested in the minor.

As regards the intention of the appellant at the time of the purchase of the ticket it is obvious that a man in his position could not have had any intention to make a gift of such a sum to his son or even a gift of a chance of obtaining it. It is also clear that in purchasing the ticket he did not act under a mandate or in any sense as an agent for his son. By what process therefore did the beneficial interest pass to the son? I do not think it can be said to have done so by way of an enforceable *donatio*. The *donatio*, if any, must have been complete when the ticket was purchased. But what was it that passed on the purchase of the ticket? A mere possibility or chance of obtaining something. I know of no authority for saying that a mere chance or possibility of obtaining something can be the subject-matter of a *donatio*. Moreover, it cannot be said that there was any acceptance on behalf of the minor. In my opinion no beneficial interest can be said to have passed by *donatio* nor by any other contractual relationship between the parties. There is no question of an estoppel, nor do I think that, assuming that the English law can be made applicable by reason of section 111 of the Trusts Ordinance, No. 9 of 1917, there is anything from which a trust in favour of the minor can be implied.

There was no appearance for the respondent on the hearing of the appeal, but Mr. Croos Da Brera very properly brought to our notice the case of *Ammal v. Kangany*.[1] That was a case in which a father who paid the purchase money out of his own money caused a notarial conveyance of the land to be executed in which his minor son was named as transferee, and accepted delivery of the deed of conveyance. It was held, in a contest, not as in this case between father and son, but between a purchaser from the son (the transferee) and a lessee from the father under a lease made after the transfer, that the son acquired title to the land by the transfer, and it was pointed out that the provisions of section 2 of Ordinance No. 7 of 1840 stood in the way of the defendant, who claimed through the father. That case, however, is clearly distinguishable from this case on three grounds, at all events, namely, (1) the subject-matter was clear and definite, (2) there was delivery to a person who was clearly entitled to accept delivery on behalf of his minor son, and (3) the consideration involved by reason of section 2 of Ordinance No. 7 of 1840 does not arise in this case.

I am of opinion, therefore, that the beneficial interest in the Rs. 12,695.25 did not pass to the respondent, and the appeal must be allowed. Judgment will be entered for the plaintiff for the payment out to him of the said sum subject to the payment of any costs duly incurred on the minor's behalf in respect of the payment into Court or of the action.

[1] *(1910) 13 N. L. R. 65.*

1927.

DRIEBERG J.—

Fernando v. Fernando

I agree with the judgment of my Lord the Chief Justice.

Under the Roman-Dutch law, where a person buys in the name of another whose name is inserted in the deed or contract of purchase, the person so buying has a right of action if he can prove that he bought on his own account (*Voet, XVIII. 1, 8; Nathan's Common Law of South Africa, p. 779, 1913 ed.*).

This principle was applied to the case of purchase of land by a father in the name of his child (*Ranghamy et al. v. Bastian Vedarala* [1] and *Perera v. David Appu* [2]).

In the case of *Ammal v. Kangany*,[3] a Full Bench ruling, it was held that this principle was inapplicable in the case of a notarial conveyance of land on account of the special effect of Ordinance No. 7 of 1840. Middleton J. there said:—

> "The person in whom the property is vested by notarial conveyance, is *prima facie*, the true owner, and must be considered so subject to the right of any person claiming to be the true owner to have it declared by the Court that he is *de jure* the owner, and that the conveyance in favour of the former should be set aside. Until the Court decides this in the claimant's favour, he has no title by purchase or sale in the absence of a notarial deed in his favour."

Transactions concerning movables are, however, unaffected by this rule. In this case the ownership of the ticket gave the owner the right of action to claim the prize, if won by it, subject to any statutory bar or considerations of public policy. The organizers of the lottery have in this case placed the prize at the disposal of the person entitled to the ticket.

The appellant proved that though the ticket was written in the name of his son he bought it for himself, and he is entitled to succeed.

Appeal allowed.

[1] *(1897) 2 N. L. R. 360.*
[2] *(1903) 6 N. L. R. 236.*
[3] *(1910) 13 N. L. R. 65.*