Present: Mr. Justice Wood Renton and Mr. Justice Grenier. *July 5, 1910*

BINDUA *v.* UNTTY *et al.*

D. C., Negombo, 7,639.

Donation—Acceptance—Question of fact—Acceptance by brother of minor donee—Action on a mortgage bond against children of mortgagor—No estate left behind by mortgagor—Is plaintiff entitled to get a money decree?

Acceptance may be manifested in any way in which assent may be given or indicated. The question of acceptance is a question of fact, and each case has to be determined according to its own circumstances.

Where a donation by a father to his children was accepted by his major son on his own behalf and on behalf of his minor children, and where the donor surrendered the property to the donees after the execution of the deed of gift, and where the major son possessed the land thenceforward and his minor brother and sisters took the produce themselves on becoming majors, and where the children dealt with the land as owners while the donor was still alive,—

Held, that there was sufficient acceptance of the deed of gift.

In an action on a mortgage bond by a mortgagee against the children of the deceased mortgagor, the Supreme Court refused to enter even a money decree for what it was worth against the mortgagor's estate, where it appeared from the evidence that the mortgagor left no estate which can be made available for the purpose of satisfying such a decree, and where the defendants were not the administrators of the mortgagor's estate, and where they had done nothing to identify themselves with any property belonging to him.

THE facts appear in the judgment.

H. A. Jayewardene (with him *Rosairo*), for the plaintiff, appellant.—The acceptance of the gift by the major brother, on behalf of his minor brothers, is not valid. Only a natural guardian or legal guardian can accept on behalf of a minor. See *Fernando v. Cannangara;* [1] *Wellappu v. Mudalihami;* [2] *Avichi Chetty v. Fonseka;* [3] *Goonewardene v. Bastian Appu;* [4] *Silva v. Silva;* [5] *169, C. R. Ratnapura, 9078 (October 11, 1907); Muttupillai v. Valupilli.* [6] The only case in which it was held that a person who was neither a natural nor a legal guardian can accept a gift on behalf of a minor is *Lewishamy v. Silva.* [7] Counsel also referred to *Sinnapillai v. Tilliampalam.* [8]

[1] *(1897) 3 N. L. R. 6.*
[2] *(1903) 6 N. L. R. 233.*
[3] *(1905) 3 A. C. R. 4.*
[4] *(1905) 5 Tam. 75.*
[5] *(1908) 11 N. L. R. 161.*
[6] *(1909) 4 Bal. 110.*
[7] *(1906) 3 Bal. 43.*
[8] *(1878) 2 S. C. C. 5.*

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Bawa (with him *A. St. V. Jayewardene*), for the defendants, respondents.—Acceptance need not be on the face of the deed; a deed of gift may be accepted at any time before the death of the donor, or even after the death of the donor (see *Tissera v. Tissera* [1]). Minors may accept a gift when they come of age (*Voet 39,5,13*). *Lewishamy v. Silva* [2] is an authority in favour of the respondent.

Jayewardene, in reply.

Cur. adv. vult.

July 5, 1910. WOOD RENTON J.—

I see no reason to differ from the conclusion at which the learned District Judge has arrived. It does not follow from the fact that Sinda fraudulently concealed his donation of November 8, 1897, in favour of his children from Mr. Carron at the date of his mortgage to that gentleman in June, 1904, that the deed of 1897 itself was fraudulent; and the circumstances mentioned by the District Judge as to the recital in the deed of gift of the prior mortgage of 1891 in favour of the plaintiff-appellant and the due registration of the deed justify him in coming, as he did, to the conclusion that it was a genuine transfer. After careful consideration I am of opinion that there is sufficient evidence of acceptance of the deed to validate it. It is quite clear that by the Roman-Dutch Law acceptance may be manifested in any way in which assent may be given or indicated. In the present case there is evidence showing that Sinda not only permitted his eldest son Sumara, who was one of the donees, and who was of full age at the time, to accept the donation on his own behalf and on that of the minor children, but also that he surrendered the property in question to the donees after the execution of the deed of gift; that Sumara possessed the land thenceforward, and that his minor brothers and sisters took the produce themselves on becoming majors; and that they dealt with the land as owners while Sinda was still alive. I have examined all the cases that were cited to us in the argument, but I do not think it is necessary to deal with them in detail. The question of acceptance is a question of fact, and each case has to be determined according to its own circumstances. I would hold that here there is ample evidence of the acceptance of the donation to satisfy the requirements of the law in the conduct of Sinda himself at the time of the donation and subsequent to it, in the possession of the land by Sumara, a donee and a major, with Sinda's consent, and as Sinda's agent, if it is necessary to hold so much, for the purpose of the acceptance of the donation, and in the conduct of the minor donees themselves during Sinda's life. It is true that the critical point of time in such a case as this, where the donation was one taking effect at once on the execution of the deed, is the date of the execution of

[1] *(1908) 2 S. C. D. 36.*

[2] *(1906) 3 Bal. 43.*

the deed itself. But for the purpose of determining whether there was such an acceptance, we are entitled to look not only at the circumstances accompanying, but also at those subsequent to, the date of the donation. Taking all the facts of the present case I hold that a sufficient acceptance of the deed of gift has been established.

It remains only to say a word as to Mr. Hector Jayewardene's third point, that in any event he was entitled to a money decree against Sinda's estate for what it is worth. It appears on the evidence that Sinda has left no estate which can be made available for the purpose of satisfying such a decree; that the respondents are not his administrators; and that they have done nothing as yet to identify themselves with any property belonging to him. Under these circumstances (see *Mudianse v. Mudianse* [1] and *Paramanather v. Paramanather* [2]) they are not liable to have such a decree entered against them. On these grounds I would dismiss the appeal with costs.

GRENIER J.—I agree.

Appeal dismissed.