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

1909.
October 27.

AFFEFUDEEN *v.* PERIATAMBY.

D. C., Galle, 8,765.

Purchase by father in daughter's name — Donation — Acceptance — Dominium—Ordinance No. 7 of 1840.

Where a person pays his own money for a land and gets his daughter's name inserted in the deed as purchaser, the daughter becomes the owner of the property, where the transaction is in effect a donation and not a sale.

Ranghamy v. Bastian Vedarala,[1] *Perera v. David Appu,*[2] and *Murugesu v. Appuhamy* [3] referred to and commented on.

Quære by HUTCHINSON C.J.—Whether, in view of the provisions of Ordinance No. 7 of 1840, a transfer in favour of one person can vest title in another person whose name is not mentioned in the transfer ?

ACTION *rei vindicatio*. Appeal by the defendant from a judgment in favour of the plaintiff. The facts and arguments sufficiently appear in the judgments.

Bawa (*Hayley* with him), for the defendant, appellant.

A. St. V. Jayewardene, for the plaintiff, respondent.

Cur. adv. vult.

October 27, 1909. HUTCHINSON C.J.—

The plaintiff claims a house in Galle Bazaar as the administrator of the estate of his late wife Kadija Umma. The defendant is the father of Kadija Umma, and claims that the house belongs to him.

By deed of sale dated September 12, 1890, Isa Nachchia, in consideration of a sum of Rs. 1,000, sold and transferred the house to Kadija Umma. The deed was registered on September 15, 1890. Kadija Umma was born on December 15, 1879, so that at the date of the deed she was only in her eleventh year. It is proved that the Rs. 1,000 was paid by her father out of his own money, and that he instructed the notary to insert her name in the deed as purchaser ; and he deposed that she did not know that he was going to buy the house, and that she had no money to buy it with. He said that the deed was delivered to and kept by him ; that he was put in possession

[1] *(1897) 2 N. L. R. 360.* [2] *(1903) 6 N. L. R. 236.*
[3] *3 Bal. 275.*

1909.
October 27.
HUTCHINSON C.J.

of the house, and leased it out and received the rents; but he admitted that once during his absence for about two months from Galle in 1905 his daughter and her husband had granted a lease of the house for two years and received the rent in advance, and that he allowed the tenant to remain and let them keep the money; and also that his daughter got possession of the deed and granted a mortgage of the house (which she afterwards paid off), and that her husband, the plaintiff, still has the deed. The plaintiff deposed that the deed was in his wife's possession at the time of his marriage; and the District Judge is of opinion that the defendant gave it to her. She was married in 1899; attained twenty-one years of age in 1901; and died in February, 1906.

The defendant submitted in his answer, and his counsel has contended before us, that as the house was bought with his money, he is legally the owner of it.

As to the defendant's intention in having the transfer made in his daughter's name, we have only, apart from the deed itself, his statement that he bought other properties in the names of other children, and that he did so in order to make provision for all his children, but that he did not intend that each child should have the property bought in his or her name, but rather that they should all divide his property equally at his death.

It appears to me that the defendant intended to make a gift of the house to his daughter; that he carried out his intention by having the house transferred to her whilst she was a minor; and that when she came of age she with his knowledge accepted the gift and took possession of the house, and that she was at the time of her death in possession of both the house and the deed. I would therefore affirm the decree of the District Court in favour of the plaintiff.

The appellant's counsel contended that by virtue of the deed of 1890, and immediately upon its execution, the title to the house vested in the father, because he had no mandate from his daughter to buy the house for her, and therefore, by the rules of the Roman-Dutch Law, he must be regarded as the real purchaser. He contended that where A has, without authority from B, bought land in B's name, and it has been transferred to B, the transfer to B is really a transfer to A. No doubt A cannot without B's authority impose any obligations on B by such a transaction; and perhaps, also, he might be able to insist on a re-transfer from B; as to that I need not give any opinion. But the proposition that a transfer to B can vest the title in A is one for which I should require clear and conclusive authority. The Ordinance No. 7 of 1840, passed "for the prevention of frauds and perjuries," enacts that no transfer of land shall be of force or avail in law unless it is in writing signed and attested as therein mentioned. It is suggested that, notwithstanding this, a transfer to B may take effect as a transfer to A without any mention of A's name in the deed. In support of this proposition

1909.
October 27.
HUTCHINSON C.J.

Ranghamy v. Bastian Vedarala,[1] *Perera v. David Appu*,[2] and *Murugesu v. Appuhamy* [3] were cited. No doubt that was the Roman-Dutch Law; but the question that occurs to me is whether those decisions are consistent with the statutory enactment which I have quoted. But whether that is so or not the transaction in the present case was a gift, and should be supported as such.

I would dismiss the appeal with costs.

WOOD RENTON J.—

On the authority of Voet (*XVIII., tit. 1, s. 8*) and of local decisions of which one at least is binding on us (*Ranghamy v. Bastian Vedarala*,[1] Withers J.; *Perera v. David Appu*,[4] Layard C.J., Moncreiff J.), I think we must take it that if a father buys land in his daughter's name, but himself accepts delivery of the transfer, he becomes the real purchaser, by virtue, not of the conveyance itself, for that confers no right of action either on him or on his daughter, but of the delivery. It appears to me, however, that that rule of law does not apply where the transaction is in effect a donation and not a sale. In *Ranghamy v. Bastian Vedarala* [1] the facts are briefly stated. But it is clear that the purchaser intended the land to remain in his own possession during his lifetime, and that his daughter's name was inserted in the deed merely with a view to making some provision for her in the event of his death. In *Perera v. David Appu* [2] Moncreiff J. says: "I should imagine that the price was paid from money to which the minors were entitled. It is not suggested that the purchase was a donation."

In the present case the boutique in question was bought by the defendant-appellant with his own money, but intending—I am accepting on all questions of fact the findings of the learned District Judge—that it should ultimately belong to his daughter Kadija Umma. He retained it in his possession and dealt with it during her first marriage. At the time of her first marriage Kadija Umma was still a minor, and the boutique was not included in her dowry. On her second marriage, however, to the plaintiff-respondent, in 1903, it was entered both in the dowry list and in the *Kaduthan*, though no formal deed of conveyance was executed; the original title deed, which had been duly registered in Kadija Umma's name, and the boutique were handed over to her, and she dealt with the property thereafter as her own, with the appellant's full knowledge and consent.

On these facts I think that the acceptance and registration of the conveyance, which was intended as a donation by the appellant, in his daughter's name, were in law an acceptance of that donation by him on her behalf, and that the payment of the consideration to

[1] *(1897) 2 N. L. R. 360.* [2] *(1903) 6 N. L. R. 236.* [3] *3 Bal. 275.*
[4] *(1903) 6 N. L. R. 236; and see Nathan II., s. 852.*

1909.
October 27.
WOOD RENTON J.

the vendor on condition of the execution of the conveyance in the name of Kadija Umma was a sufficient delivery of the subject-matter of the donation to Kadija Umma herself, apart from her subsequent ratification of the donation with the knowledge and consent of the appellant (see *Elliott's Trs. v. Elliott* [1]).

I would dismiss the appeal with costs.

Appeal dismissed.