1943 *Present :* **de Kretser and Wijeyewardene JJ.**

NAGARATNAM *et al.* Appellant, *and* KANDIAH *et al.* Respondent.

7—D. C. Jaffna, 16,415.

Deed of Gift—Acceptance of deed by maternal uncle on behalf of minors—Presumption of acceptance.

A deed of gift to minors by their mother, their father being a lunatic, may be accepted on their behalf by their maternal uncle.

Where the deed contained a statement to the effect that the donor delivered possession of the property to the minors, acceptance may be presumed.

APPEAL from a judgment of the District Judge of Jaffna.

Plaintiffs, who are minors, instituted this action by their next friend under section 247 of the Civil Procedure Code to have it declared that two parcels of land which they claimed upon a deed of gift No. 5218 of May 16, 1937, from their mother (second defendant) were not executable under a writ obtained by the first defendant (the judgment-creditor of the second defendant). They further prayed for a declaration of title to the property. The first defendant pleaded that the gift was void because it was executed in fraud of creditors and was not validly accepted. Several issues were framed at the trial but Counsel for the defendant (Mr. Vanniasingham) wanted issue No. 3, viz., Was there a valid acceptance of deed No. 5218? tried as a preliminary issue. No evidence was led and the argument proceeded on the law. The District Judge held that the acceptance was not valid.

L. A. Rajapakse (with him *O. L. de Kretser* (*Jnr.*)), for plaintiff, appellant. —This is a gift by a mother to her minor children. The father who is the natural guardian is presumably a lunatic; and in these circumstances, acceptance by the maternal uncle is valid. The acceptance of a gift by minor donees may be presumed. *Hendrick v. Sudritaratne*[1]; *Tissera v. Tissera*[2]; *Government Agent v. Karolis*[3].

The acceptance may be signified in the deed itself (as in this case in the deed possession is stated to have been given to the donees), by a letter or in any other way, e.g., by words, by competent signs, by a nod, &c. *Pereira p. 605*; *3 Maasdorp (4th ed.) pp. 107-109.*

Acceptance may be presumed by proof that the donees possessed on the gift *Pereira pp. 606-7*; *Binduwa v. Untty*[4]. It is a question of fact. The defendant led no evidence. The D. J. has misdirected himself in thinking that the decision in *Fernando v. Alwis*[5] is applicable to the facts of this case.

S. J. V. Chelvanayagam (with him *T. Curtis*), for the first defendant, respondent.—A gift in favour of minors may be accepted (*a*) by the minors themselves, (*b*) by some other person on behalf of the minors at the request of the donor, (c) by possession of the property by the minors. In this case the person who purports to accept for the minors is a stranger. He is not the natural guardian. There is no evidence that the donor requested him to accept the gift for the minors. There is no proof of possession by the minors. A mere statement in the deed that possession is handed over is not proof of possession. The deed is admitted only to prove title and for no other purpose. The plaintiffs did not tender any evidence at all on the issue of acceptance. The only course open to the court is to remit the case to the lower court for any evidence that may be tendered by plaintiffs on the issue of acceptance.

Cur. adv. vult.

March 26, 1943. DE KRETSER J.—

When this case came up for trial certain issues were suggested and thereupon Mr. Vanniasingham began to address the Court on issue 3, whereupon the judge decided to deal with that as a preliminary issue of

[1] *3 C. A. C. 80.*
[2] *2 S. C. D. 36.*
[3] *2 N. L. R. 72.*
[4] *13 N. L. R. 259*
[5] *37 N. L. R. 201.*

law. He could only deal with the preliminary issue of law under section 47 of the Civil Procedure Code. Mr. Vanniasingham then cited a number of cases and addressed the Court. To what effect he addressed the Court we do not know. The learned Judge then decided the issue in favour of the defendant and in doing so misdirected himself as to the effect of the case *Fernando v. Alwis* (*supra*) in which he thought it was held that the acceptance by an elder brother on behalf of his minor brother was not a valid acceptance. What was pointed out in that case was that the elder brother had accepted on behalf of himself and a stranger had purported to accept on behalf of the minors. He also thought the correct legal position should be to find out whether there is any valid acceptance on the face of the deed. But in the Roman-Dutch Law, as Marsdorp and Walter Pereira point out, acceptance may be signified in many ways and the form of the acceptance is immaterial. It may be inferred from circumstances, and in *Hendrick v. Sudritaratne* it was indicated that there was a natural presumption in all cases that the deed was accepted. We have in the record evidence which indicate that the minor's father was a lunatic, who had been separated from his wife by decree of Court. In the earlier testamentary proceedings it was the minor's uncle who was appointed guardian and it would be extremely difficult to say that in such circumstances the maternal uncle would not be a competent person to accept the deed. Nor can it be assumed that the minors did not accept the deed. Considering their ages and considering the fact that in the deed of gift there is the express statement made by the donor that she had that day delivered possession of the property donated, it is likely that she did deliver possession of the property. Donation is a form of contract and as such there must be an acceptance. What the law chiefly seems to require is evidence that the donor did intend to gift the property. In our opinion therefore this case has been too summarily disposed of. Issue 3 should be answered in favour of the plaintiff. There are sufficient circumstances which indicate that the deed has been validly accepted. The order of the learned District Judge is set aside and the case is sent back for the trial to proceed on the other issues. The costs of the last date and of this appeal will be paid by the first defendant-respondent.

WIJEYEWARDENE J.—I agree.

Set aside, case remitted.