1954 *Present :* Rose, C.J., and Sansoni, J.

A. A. M. THASSIM, Appellant, and N. M. M. SULEIMAN, Respondent

S. C. 157—D. C. Matara, 46

Estoppel—Recital in a deed—Right of a person to act on the faith of that representation —Evidence Ordinance s. 115.

Where A holds B out as owner of A's property and a third person C purchases it for value from the apparent owner B in the belief that B is the real owner, neither A nor any person who subsequently purchases that property from A will be entitled to dispute C's claim to be its owner.

APPEAL from a judgment of the District Court, Matara.

C. V. Ranawake, for the plaintiff-appellant.

N. E. Weerasooria, Q.C., with *E. A. G. de Silva*, for the defendant-respondent.

Cur. adv. vult.

August 4, 1954. SANSONI, J.—

In this partition action the only dispute concerns a house on the land sought to be partitioned and it arises in this way. Under a partition decree of 1947 three persons, Abdul Rahim, Abdul Hamid and Abubucker were declared entitled to the lot on which this house stood. They sold that lot to one Thassim in 1948 and Thassim in turn sold it to Salahudeen by deed P3 of 1.3.51. By deed D1 of 12.5.51 Salahudeen sold "All that undivided 2/3 parts or shares of the soil and fruit trees (exclusive of the buildings standing thereon belonging to the vendees hereto)" to Abdul Rahim and Abdul Hamid already mentioned, and they by deed D2 of 14.5.51 sold "all that undivided 2/3 part or shares of the soil and fruit trees together with the entirety of the nine cubits tiled house standing thereon" to the defendant. Eleven days later, by deed P4 of 25.5.51 Salahudeen sold "all (his) right title claim and interest to and upon the land" to the plaintiff. The plaintiff claimed that Salahudeen was still entitled to 1/3 share of the house at the time deed P4 was executed, and this 1/3 share was accordingly claimed by the plaintiff who conceded that the defendant was entitled to 2/3 share of the house. The defendant, however, claimed that the plaintiff was estopped, by the representation made by Salahudeen in Deed D1, from claiming any share of this house, and a point of contest was raised on this basis. A further point of contest suggested by the defendant's counsel at the trial was "Did any rights in the house pass on the deed D1 ?". Obviously no rights in the house could have passed from Salahudeen and his two vendees on the deed, seeing that the 2/3 share was sold exclusive of the buildings.

The only question that arises, therefore, is whether the defendant has made out his claim that the plaintiff is estopped from claiming any share of the house by reason of the representation made by Salahudeen in the deed D1. Now it must be borne in mind that the plea of estoppel is not raised by Abdul Rahim and Abdul Hamid. It might in that situation have been contended against them that they were aware that Salahudeen was the owner of the house ; they would also have had to prove that they were persuaded to purchase by reason of the particular statement made in D1.

The position of the defendant is different. He gave evidence, which the learned District Judge has accepted, in the course of which he said :— "The deed D1 in favour of the vendors showed that they were the sole owners of the house. That is why I purchased the house." In other words, his case was that he bought the 2/3 share and the entire house on deed D2, believing and acting on the statement made by Salahudeen as

regards the house. In this state of things it seems clear that if Salahudeen had claimed the 1/3 share of the house now in dispute he would have been estopped. "If, whatever a man's real intention may be, he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it, and did act upon it as true, the party making the representation would be precluded from contesting its truth"—per Parke B. in *Freeman v. Cooke* [1]. That is the rule which has always obtained in England and it is the rule in our Law despite the fact that Section 115 of the Evidence Act (Cap. 11) uses the words "intentionally caused another person to believe a thing to be true" while the English rule laid down in *Pickard v. Sears* [2] used the words "wilfully caused another to believe the existence of a certain state of things".

Supposing again that Salahudeen, and not the plaintiff, was claiming the 1/3 share of the house, would the circumstance that the representation made by Salahudeen appears in a deed to which the defendant was not a party make a difference? I think not, seeing that the statement made in the deed D1 was, in this case, the approximate cause of the defendant buying on the deed D2, and the defendant is the representative of the purchaser on deed D1. I can best give the reason in the words of a principle which Layard, C.J. said, in *Sadiris Appu v. Cornelis Appu* [3], had been enunciated by the Judicial Committee of the Privy Council:— "It is a principle of natural equity that where A allows B to hold himself out as owner of A's property"—*a fortiori* where A holds B out as owner of A's property—"and a third person purchases it for value from the apparent owner in the belief that he is the real owner, A shall not be permitted to recover, unless he can prove that the purchaser had direct notice of the real title, or that there existed circumstances which ought to have put him on inquiry which, if pursued, would have led to a discovery of it". An analogous case arose in *Silva v. Thedris* [4] where this same principle was applied. There too the representation was made not directly to the person who pleaded the estoppel, but to his vendor.

And that brings me to the submission which was strongly pressed upon us by the plaintiff-appellant's counsel. He urged that the defendant was put on inquiry as to who in truth was the owner of the house, but we were not told what circumstances should have raised suspicion in the defendant's mind and put him on inquiry. He was entitled to rely on the statement regarding the house in D1. His vendors produced it as proof of their claim to the entire house. The case of *Trinidad Asphalt Co. v. Coryat* [5] cited by the appellant's Counsel only decided that a recital in a deed creates no estoppel in favour of a *stranger* who does not claim under a party to the deed. But the defendant is not a stranger in that sense. His immediate source of title is the deed D1 which contains the representation which misled him. Any reasonable man was entitled to act on the faith of that representation in the absence of actual or constructive notice that the truth was otherwise.

[1] *2 Exch. 654.*
[2] *6 A. & E. 469.*
[3] *(1905) 8 N. L. R. 350.*
[4] *(1920) 22 N. L. R. 65.*
[5] *(1896) A. C. 587.*

Upto this point I have dealt with the matter as though Salahudeen and not the plaintiff was disputing the defendant's claim to be owner of the entire house. I have tried to show why Salahudeen would have been estopped from raising a dispute. The plaintiff who purchased from Salahudeen *after* the defendant had purchased upon D2 can be in no better position than Salahudeen. Since the plaintiff claims through Salahudeen he is equally bound.

For these reasons I would dismiss this appeal with costs.

ROSE, C.J.—I agree.

Appeal dismissed.