1896. *June 11.*

THE GOVERNMENT AGENT, SOUTHERN PROVINCE, *v.* KAROLIS *et al.*

D. C., Galle, 2,910.

Donation to minor—Presumption as to acceptance on his behalf—Possession by parents of minor of property donated.

The law favours the acceptance of gifts in the case of minors. The acceptance on the face of the deed by some person or other is not necessary : acceptance will be presumed when there are circumstances to justify such presumption. Where, therefore, it was found that property gifted to minors had come into the possession of their parents, the presumption was that the parents entered into such possession on behalf of the children. If the interest and the duty of the parents were in conflict, the presumption was that they did their duty to their children. There was, therefore, in the circumstances, a sufficient acceptance of the gift on behalf of the donees.

THE facts of the case sufficiently appear in the judgment.

Weinman, for appellant.

Asserappa, for respondent.

11th June, 1896. BONSER, C.J.—

This is a compensation matter. It appears that in 1846 the owner of a garden by a deed of donation gifted that garden, or at all events a definite portion on the western side, to two of his grandchildren, the first defendant and his brother David, who were the children of his son Juanis. He recited in that deed that the occasion of this gift was the weaning of the first defendant. Therefore, at the date of this gift the first defendant and his brother were infants, who could not themselves accept the deed of donation, for, according to law, acceptance is necessary. But, as was pointed out in the case of *Francisco v. Costa et al.* (*8 S.S.C. 189*), by Mr. Justice Dias, the law favours the acceptance of a gift in the case of minors. It was suggested by Mr. Asserappa that an acceptance on the face of the deed by some person or other was necessary. That is clearly wrong. Vanderlinden, at page 124, states that "it is immaterial whether "the acceptance is made in the instrument itself, by a letter, or in "any other way, provided it is sufficiently clear." And in the case of *Lokuhamy et al. v. Juan et al.* (*Rámanáthan, 1875, p. 215*), to which my brother Lawrie has called attention, it was laid down by this Court that acceptance will be presumed when there are circumstances to justify such a presumption. Now, in the present case, we have this circumstance, found by the District Judge, that this property came into the possession of Juanis, the father, and his wife, the mother, of the infants. In my opinion, we ought to presume that they entered into possession of it on behalf of the children. If their interest and their duty were in conflict, we ought to presume that they did their duty by their children. I therefore dissent from the finding of the District Judge, that he has "no hesitation in saying "that the deed of gift on which the first defendant relies was never "accepted." In my opinion, we are bound to hold that it was accepted. That being so, the first defendant would be entitled to a moiety of the purchase money. With respect to the moiety belonging to David, it is stated that David is missing. It is not proved that he is dead; therefore, the Court is not in a position to deal with the moiety of the purchase money which represents his share. It must remain in Court until it is proved that David is dead. Then those who are his heirs will be entitled to apply to have it paid out to them.

LAWRIE, J., agreed.