WELLAPPU *v.* MUDALIHAMI.

D. C., Chilaw, 2,275.

1903.
March 16 and 25.

Donation by father to minor son—Conduct of father as regards acceptance of deed of gift—Evidence of acceptance—Power of father to accept on behalf of his minor son a deed of gift made by himself.

A gift by a father to his minor son is not void, but there must be something which the law can recognize as an acceptance on his behalf.

Where a father, after making the deed of gift, remained in possession of the property, managed it, and, while the donor was still a minor, revoked the deed of gift, such conduct cannot be regarded as acceptance of the deed, even if a father can be at once donor and acceptor of the gift.

The rule of law which requires acceptance by a competent person is based on the principle that a donation is a contract to which there must be two parties. A father making a donation cannot accept it on his child's behalf.

IT was alleged by the first plaintiff that in 1885 his father, the defendant, executed a deed of gift granting him certain lands mentioned in the plaint when he was a boy of about twelve years of age; that the plaintiff received and gave back the deed to the defendant for safe-keeping; that about 1893 he married and

1903. *March 16 and 25.*

entered into possession of the lands; and that in November, 1899, he leased them to the second plaintiff, whom the defendant ousted. The first plaintiff therefore prayed for a declaration of title in his favour and for ejectment of the defendant.

The defendant admitted the deed of gift, but pleaded that he executed it when he was very ill and expected to die; and that he did not deliver the deed or surrender his possession of the land to the donees. In evidence he produced a document dated 1893, by which he intended to revoke the deed of gift.

The District Judge, Mr. J. G. Fraser, held that, as the first plaintiff was a minor for several years after the deed of gift was executed, the question of possession was of no importance; and that the only real issue was whether the deed of gift was valid or not for want of acceptance. As the donor was still alive and no ground for revocation appeared to have arisen, and the donee was willing and eager to accept the donation, as might be seen from the fact of his bringing this action, the District Judge held that the donation was good, and that the defendant was bound to deliver possession to the plaintiff.

The defendant appealed. The case was argued on 16th March, 1903.

Sampayo, K.C., appeared for appellant.

H. Jayawardena, for respondent.

Cur. adv. vult.

March 25, 1903. LAYARD, C.J.—

In this action the plaintiffs sued the defendant appellant for a declaration of title to certain lands described in the plaint and to have the defendant ejected therefrom.

The plaintiffs based their title on a deed of gift executed by the appellant in favour of the first plaintiff. The defendant contended that there was no acceptance of the gift, and that therefore no title to the land passed to the first plaintiff. The deed, it appears, was never registered, and never left the defendant's possession; further, it was executed during the minority of the donee, and no acceptance on his behalf was made by any one.

The Judge appears to have considered that acceptance and possession were of no importance, and gave judgment for the respondents on the ground that " the donee is still alive, and that the donee is willing and eager to accept the donation, as is shown by his bringing this action ".

In this case the defendant is the father of the first plaintiff, and no question has been raised in this appeal as to the right of the father to donate to his son. I think rightly, because the decisions

of our Courts show how the Roman-Dutch Law has been interpreted in this respect. It is clear that a gift by a father to his son being a minor is not by our law necessarily void. By Roman Law it was, as the son had no independent legal existence, and with certain exceptions held no property, but in this respect the Roman-Dutch Law according to some authorities has not followed the Roman Law. (*Van der Keessel, bk. III., chapter II., sec 8; Grotius' Opinions, De Broyne's Translation, p. 386; Francisco v. Costa, 28 S. C. C. 189.*)

The contrary authorities (*Vanderlinden, Henry's Translation, p. 214*) have not been followed here, on the ground that the Roman doctrine depended on the *patria potestas*, which has no place in our law. By our law persons are all either majors or minors, over or under twenty-one years of age, and we know nothing of the elaborate distinctions of Roman Law, which recognized three stages of non-age, "infancy," "puberty," and "minority;" and consequently the only material fact is that the first plaintiff was a minor. A gift by a father to his son is not invalid in our law, provided there be something that the law can recognize as an acceptance on his behalf (*Francisco v. Costa, 8 S. C. C. 189; Government Agent v. Karolis, 2 N. L. R. 72; Fernando v. Cannangara, 3 N. L. R. 6*). Now, here the father, remains in possession, manages the property, and, whilst the donee is still a minor, revokes the deed of gift. I cannot regard the father's conduct here as an acceptance of the deed of gift made by himself to his child, even if a father can be at once donor and acceptor of the gift on behalf of the donee. When a grandparent made a donation to his grandchild, the entry into possession by the parents was held presumed to be on the donor's behalf, and this was properly construed as an acceptance. (*Government Agent v. Karolis*).

The cases reported in *Rámanáthan, 1863-1868, p. 132, and 1872-1875, p. 215*, only show that there must be some affirmative evidence of acceptance on the minor's behalf. Is there such evidence here? I cannot say there is. I cannot see how the donor of a gift to a minor, even though he be the father, can accept it on the minor's behalf. The rule of law which requires acceptance by a competent person of a gift, is based on the principle that a donation is a contract, and there must be two parties to every contract. (*Voet, XXXIX, 5, 12, 13.*) I fail to see how a donor, even though a father, can act in two capacities at the same time. I cannot persuade myself that a father can even expressly accept on his child's behalf a gift he has himself made.

1903.
March 16 and 25.
LAYARD, C.J.

Finding as I do that the father's conduct in this case did not show an acceptance of the deed of gift on behalf of the minor, and doubting as I do whether a father can accept a deed of gift made by himself on behalf of his minor child, even if there was such an acceptance here, and holding as I do that to perfect a deed of gift in favour of a minor there must be an acceptance by some one capable of accepting on behalf of the minor or by the minor upon attaining the age of majority, and that there has been no such acceptance, I think the judgment of the District Judge must be set aside and judgment entered for defendant, with costs of suit and of this appeal.

MONCREIFF, J.—

I agree, and would quote from Voet (*XXXIX. 5, 13*) the following passage as showing that the donor may withdraw his donation at any time before acceptance: *Donanti liberum est donationem necdum acceptatam revocare, uti liberum cuique est ab alio contractu quocunque inchoato, sed nondum ad finem perducto, seu perfecto, resilire invito eo quocum contrahi coeptum fuerat.*