

Present: Lascelles C.J.

1912.

SINNO APPU v. PODI NONA et al.

63—C. R. Galle, 6,747.

*Mortgage by married woman who represented herself to be femme sole—
By minor who represented himself to be of full age—Estoppel.*

A party cannot by representation, any more than by other means, raise against himself an estoppel so as to create a state of things which he is under a legal disability from creating.

A mortgage executed by a married woman who represented herself to be a *femme sole*, and by a minor who represented himself to be of full age, was held to be invalid, and the mortgagors were held not to be estopped from denying the validity of the mortgage.

PLAINIFF sued on a mortgage bond the defendants, who were the legal representatives of the mortgagors. The defendants pleaded that the bond was invalid, as it was executed by a married woman (Balahami) without the consent of her husband, and by a minor (Balahami's son, Deonis). The Commissioner of Requests held that Balahami and Deonis had represented themselves to be widow and major respectively at the time of borrowing the money from the plaintiff, and that the plaintiff was ignorant of the deception; and he entered judgment for the plaintiff.

The defendants appealed.

Bawa, K.C., for the appellants.—*Wijesooria v. Ibrahimsa*,¹ on which the Commissioner of Requests relies, does not apply to the facts of this case. The circumstances of that case are very different from this. There the Supreme Court distinctly held that the minor was guilty of fraud, and that he was trying to take advantage of his own fraud. See judgment of Middleton J. Estoppels cannot over-ride the law of the land. A mortgage by a married woman is invalid (see *Silva v. Dissanayake*,² *Marie Kangany v. Kuppasamy Kangany*³).

A. St. V. Jayewardene, for the plaintiff, respondent.—In *Silva v. Dissanayake*² and *Marie Kangany v. Kuppasamy Kangany*³ there was no question of fraud. But in this case Balahami and Deonis represented themselves to be widow and major respectively at the time of borrowing the money.

¹ (1910) 13 N. L. R. 195.

² (1892) 2 C. L. R. 123.

³ (1906) 10 N. L. R. 79.

1912. Deonis could not have repudiated the mortgage bond, as he had represented himself to be of full age. *Wijesooria v. Ibrahimsa*¹ is *Sinno Appu s. Padi Nona* a binding authority.

Counsel also referred to *Don Carolis v. James*,² and the Evidence Ordinance, section 115.

Bawa, K.C., in reply.

Cur. adv. vult.

May 15, 1912. LASCELLES C.J.—

This is an appeal from a judgment on a mortgage bond, in which the defence was that one of the mortgagors, Balahami, was a married woman, and had executed the bond without the consent of her husband, and that the other mortgagor, Deonis, Balahami's son, was a minor when he executed the instrument. The learned Commissioner has given judgment on the bond, on the ground that there was misrepresentation on the part of the mortgagors. He accepts the evidence that Balahami described herself as a widow to the notary, and that Deonis stated that he was of full age.

In my opinion the judgment of the learned Commissioner cannot be sustained. By section 9 of "The Matrimonial Rights and Inheritance Ordinance, 1876," a married woman may dispose of her immovable property *inter vivos* with consent of her husband, "but not otherwise", and a minor is also under a common law disability as regards the disposal of his property.

It is a well-settled principle of law that a party cannot by representation, any more than by other means, raise against himself an estoppel so as to create a state of things which he is under a legal disability from creating. On this principle it has been held that a corporate body cannot be estopped from denying that they have entered into a contract which it was *ultra vires* for them to make (*Canterbury Corporation v. Cooper*³); that a married woman protected by a restraint on anticipation cannot either by deed or representation estop herself from denying facts which, if true, would put an end to the restraint (*Cannon v. Farmer*⁴); and the same principle is applicable, subject to certain exceptions and equitable considerations, to contracts entered into by minors. In *Wijesooria v. Ibrahimsa*,¹ on which the learned Commissioner relies, the *ratio decidendi* was that the Court would refuse its assistance to a person who was applying to the Court to help him to obtain the benefit of his own fraud.

The present case is entirely different, for here the plaintiff, on the strength of the mortgagors' misrepresentation as to their status, is asking the Court to clothe with legality an instrument which is

¹ (1910) 13 N. L. R. 195.

² (1909) 1 Cur. L. R. 224.

³ (1909) March to August L. T. 597.

⁴ (1849) 3 Exch. Rep. 698.

in itself of no avail in law. This, I think, cannot be done in view of the authorities which I have cited. I would add that though there is evidence that Deonis made an untrue statement as to his age, the evidence of fraud, in the proper sense of the word, is almost entirely wanting so far as he is concerned. I set aside the judgment, and dismiss the action with costs here and in the Court below.

1912.

LASCHELLES
C.J.

*Sinno Appu
v. Podi Nana*

Set aside.
