1909.
November 25.

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Middleton.

JAYESEKERE *v.* WANIGARATNA *et al.*

D. C., Galle, 8,720.

Conveyance for dowry is for valuable consideration, though called gift in deed—Priority by registration—Acceptance.

A conveyance of land by a father to his daughter by way of dowry on her marriage is, *primâ facie*, a conveyance for valuable consideration. Such a deed gains priority over an anterior deed of sale by prior registration.

The fact of such a deed of conveyance being called a deed of gift cannot make any difference, if it is clearly proved what the real nature of it was.

No question of acceptance arises with respect to a dowry deed.

APPEAL from a judgment of the District Judge of Galle (W. E. Thorpe, Esq.).

This was an action for the partition of Kabarayamullewatta-addarakumbura, 68 kurunies in extent. The original owner was one Dines. Plaintiff-appellant, who married a daughter of Dines, claimed, *inter alia*, 30 kurunies by " gift deed " (P 2) as dowry at

marriage, and sought partition according to pedigree P 1 filed in the case. P 2 was dated December 3, 1884, and was registered on May 26, 1885. It was not accepted on the face of it.

Plaintiff's rights were contested by the tenth defendant and first defendant, respondents (both also sons of Dines), who claimed the whole field by D 1, by which Dines sold to the first and tenth defendants on October 21, 1878, the entirety of the field. D 1 was registered on November 22, 1886. The respondents contended that, inasmuch as P 2 was a deed of gift, it could not gain priority over D 1 by registration.

The learned District Judge held that D 1 and P 2 were genuine; that P 2 would prevail over D 1 by registration if it was accepted, and if plaintiff had possession; that there was no acceptance; and that plaintiff had not possessed the field.

Plaintiff appealed.

Van Langenberg (with *Hayley*), for the appellant.

A. St. V. Jayewardene, for the respondents.

The following authorities were cited at the argument :—*Fernando v. Fernando*,[1] *Hamine v. Hamine*,[2] *Valupillai v. Katiravaloe*,[3] *Dingiri Menika v. Dingiri Menika et al.*,[4] *Stroud.*

Cur. adv. vult.

November 25, 1909. HUTCHINSON C.J.—

I do not assent to every word of the judgment of the District Judge, but I think that the conclusion at which he arrived will have to be accepted.

The deed P 2 of December 3, 1884, on which the appellant relies, purports to have been executed by Don Dines de Silva in favour of his daughter "on the day of her marriage as dowry." He had in fact previously by deed D 1 dated October 21, 1878, conveyed to two others of his children the same lands, of which he conveyed a part by P 2, so that it seems that there was some fraud on his part with regard to one or the other of those deeds. But there is no evidence of any fraud in connection with P 2 on the part of the daughter or her husband. And a conveyance of land by a father to, or for the benefit of, his daughter by way of dowry on her marriage is, *primâ facie*, a conveyance for valuable consideration. It is possible, of course, and it is a thing which is done every day, for the parents or friends of a bride to give her a present on the day of her marriage, a pure gift, which does not form the consideration or any part of the consideration for the bridegroom marrying her. But that is not dowry. And in this country, as in most others, the dowry is almost always the consideration or part of the consideration for the man taking the woman as his wife. The

[1] *(1901) 5 N. L. R. 230.*
[2] *(1905) 1 Bal. 162.*
[3] *(1892) 5 Tam. 94.*
[4] *(1906) 9 N. L. R. 131.*

1909. November 25.

HUTCHINSON C.J.

fact of the deed being called a "deed of gift" cannot make any difference, if it is clearly proved what the real nature of it was.

As, therefore, P 2 was made for valuable consideration, no question can arise whether it was accepted or not, and it prevails over D 1 because it was registered first. The respondents had therefore to prove title by prescription. They claimed in their answers to have a prescriptive title, and one of the issues settled was "possession," which was doubtless intended to refer to that claim.

The District Judge finds that the plaintiff never had possession, but that possession has all along been with the first and tenth defendants in accordance with the sale carried out by D 1 in 1878. He places too much reliance on the fact of the entry of the respondents' names in the Grain Tax Register. He says that they appear there "as the sole owners;" but that is not so; the names entered are "Don Nik de Silva, D. Don Cornelis de Silva, and others." If the entry of the tenth defendant's name in 1883 is of any value as evidence that he was one of the two co-owners under D 1, the words "and others" are at least equally strong as evidence that those two persons were not the sole owners. The fact is that these registers are of no value at all as evidence of the title of the persons entered in them as owners, without evidence as to the persons by whom and on whose information and the circumstances under which the names were entered. The entry of A's name by an officer proves nothing in itself, but if it was done on B's request or information it would be strong evidence against any claim by B. On the whole of the evidence, however, I do not think that we could set aside the finding of the District Court and find that the respondents have not proved a prescriptive title, and I think that the appeal should be dismissed with costs.

MIDDLETON J.—I agree.

Appeal dismissed.