1965 *Present :* **T. S. Fernando, J. and Alles, J.**

K. V. KIRIGORIS and 2 others, Appellants, *and*
S. J. A. EDDINHAMY, Respondent

S. C. 374 of 1964—D. C. Tangalle, 921/L.

Donation—Gift by father to son (a major) and latter's sister and step-sister who were minors—Acceptance by son—Validity.

A deed of donation was executed by a person in favour of A, B and C. A was the donor's son, and B and C were A's sister and step-sister respectively. A had reached the age of majority, but B and C were minors. The gift was accepted by A on his own behalf and on behalf of the minors B and C.

Held, that the acceptance on behalf of the minors was valid for the reason that the donor had allowed such acceptance.

APPEAL from a judgment of the District Court, Tangalle.

G. T. Samerawickreme, Q.C., with *N. R. M. Daluwatte* and *W. S. Weerasooria*, for the plaintiffs-appellants.

E. A. G. de Silva, for the defendant-respondent.

Cur. adv. vult.

October 27, 1965. T. S. FERNANDO, J.—

The main dispute at the trial of this action which was filed by the plaintiffs seeking a declaration of title to two lots A and B in plan No. 1874 of 23rd November 1962 and ejectment of the defendant therefrom was whether P4, deed of donation No. 19825 of the 8th June 1946, had been validly accepted. P4 was executed by the father of the three plaintiffs about 2 years before he married the defendant who is the step-mother of the plaintiffs. It would appear from the evidence that the 1st plaintiff, Kirigoris, had just reached the age of majority at the time of the execution of P4, but that the 2nd and 3rd plaintiffs, his sister and step-sister respectively, were minors. Their father, reserving to himself a life interest, gifted the two lots subject, however, to a fidei-commissum. P4 contained an acceptance clause in the following terms :—

" And I the first named (1st plaintiff) the said donee do hereby thankfully accept the foregoing gift subject to the life-interest of the donor hereof and to the restriction aforementioned on my behalf and on behalf of the second and third named donees (2nd and 3rd plaintiffs) who are minors. "

At the trial the first plaintiff, in giving evidence, stated that he was about 21 years of age at the time of the execution of P4. His father died in 1954. A witness to the deed who was 65 years old at the time of the trial (in 1963) thought at one stage of his evidence that the 1st plaintiff was about 15 years old but later thought he might have been older. It is noteworthy that in the acceptance clause the 2nd and 3rd plaintiffs are referred to expressly as minors ; the implication therefore is that the 1st plaintiff was not a minor. The trial judge did not himself reach any finding as to the age of the 1st plaintiff at the time of the execution of P4. He dealt with the issue before him as if the 1st plaintiff had reached majority at the relevant time. The issue in regard to valid acceptance of P4 was not raised until after the 1st plaintiff had concluded his evidence in chief. Deed P4 had been expressly pleaded in the plaint. We did not find ourselves able to accept the argument of defendant's counsel before us that we should now find that it was not proved that the 1st plaintiff had reached the age of majority in 1946.

In regard to the main dispute, whether P4 had been validly accepted, the learned trial judge purported to follow a judgment of this court in the case of *Packirmuhaiyadeen v. Asiaumma*[1], in the course of which the present Chief Justice had stated " it is clear that the major brother was neither the natural nor the legal guardian of his minor brother ". The trial judge was apparently unaware of the fact that the Chief Justice himself, in the later case of *Nagaratnam v. John*[2], expressly stated that his earlier judgment could " no longer be considered correct " for a reason to be found in the Privy Council decision in *Abeyewardene v. West*[3] that the donor had allowed the acceptance to be made by the grandfather on behalf of his (the donor's) minor child. To use the Chief Justice's own words—(see page 116)—" However, it is now clear from *Abeyewardene v. West* that in the case of a donation made by parents, acceptance of the donation by the brother-in-law and the brothers of the minor donee is good, for the reason that the donors have allowed such acceptance to be made on behalf of the minor child. "

We are convinced that, had the judgment in *Abeyewardene v. West* (supra) or that in *Nagaratnam v. John* (supra) been brought to the notice of the trial judge, his decision of this case would have been different. The other relevant issues have all been answered at the trial against the defendant. I would, therefore, set aside the judgment and decree appealed against and direct that judgment be entered as prayed for by the plaintiffs with costs here and below.

ALLES, J.—I agree.

Appeal allowed.

[1] *(1956) 57 N. L. R. at 450.* [2] *(1958) 60 N. L. R. at 115.*
[3] *(1957) 58 N. L. R. at 319.*